No. 05-19-00607-CV

In the Court of Appeals
For the Fifth Court of Appeals District
Dallas Texas

Peter Beasley, Appellant

v.

Society of Information Management,
Dallas Area Chapter, et. al., Appellees

Appeal from the 191st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-18-05278
The Honorable Judge Gena Slaughter

APPELLANT'S MOTION FOR REHEARING

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Point #2. The Opinion overlooks that the trial court abused its discretion by failing to make the requisite findings necessary for the trial court to invalidate Beasley's demand for trial by jury.

Point #3. The Opinion has two (2) material errors of fact which have resulted in an erroneous legal conclusion, requiring the rehearing be granted, and the current Opinion withdrawn.

Point #4. The Opinion relies on the wrong standard of review, and the trial court did not require the factors under *Andersen* or *Rohrmoos*, thus resulting in a legal error and the $422,064 unreasonable security fee, the highest in state history which is 40x times the normal amount.

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APPELLANT'S MOTION FOR REHEARING

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, Peter Beasley who respectfully requests pursuant to Rule 49.1 rehearing of the matters upon appeal, and states the following: Tex. R. App. P. 49.1.

August 28, 2020, this Court affirmed the trial court's judgment, in a detailed 30-page opinion, ("The Opinion"), Appendix A, authored by Justice Osborne. While Beasley, respectfully, does not agree with the Court's initial judgment, the Opinion finally highlights where to focus this *pro se* appeal.

In August 2020, the Court's on-line records show Justice Carlyle authored nine (9) opinions, Justice Whitehall nine (9) opinions, and Justice Osborne ten (10) opinions, with her signing three on the same day including this opinion.

With this Panel's workload, it is completely understandable how mistakes could be made.

III. REHEARING POINTS RELIED UPON

Point #1. The Opinion relied on an outdated 2006 legal precedent, requiring the Opinion be withdrawn, where the trial court's failure to enter required "11.054 findings" is fatal as defined in this Court's applicable 2013 holding, *Amir-Sharif v. Quick Trip Corp*, an error this Court has no jurisdiction to correct.

Point #2. The Opinion overlooks that the trial court abused its discretion by failing to make the requisite findings necessary for the trial court to invalidate Beasley's demand for trial by jury.

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Point #4 The Opinion relies on the wrong standard of review, and the trial court did not require the factors under *Andersen* or *Rohrmoos*, thus resulting in a legal error and the $422,064 unreasonable security fee, the highest in state history which is 40x times the normal amount.

Point #5. The name Leslie is genderless and Peter may not be a White person, and the Opinion omitting that Beasley is Black and otherwise distorting this "Black Lives Matter" lawsuit is an error at law, where the Court has a sworn duty to discern the correct, relevant facts.

IV. ARGUMENT & AUTHORITIES

August 28, 2020, with this Court's Opinion, Beasley's 4-year long legal dispute and his claims for millions in damages has nearly evaporated.

Beasley had complained about this court's past holding in *Drum v. Calhoun*[1], which he now recognizes is not what caused him offense.

Beasley is confident that granting the rehearing, sustaining just one of his meritorious issues will lead the parties to a quick, agreed settlement. Hopefully, this saga can move back to the trial court here for a speedy resolution.

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[1] *Drum v. Calhoun*, 299 S.W.3d 360, 364 (Tex.App.—Dallas 2009, pet. denied)

A. THE OPINION IS INCURABLY FOUNDED ON AN OUTDATED 2006 HOLDING, CAUSING THE COURT TO USE AN INCORRECT STANDARD OF REVIEW, WHERE THE CORRECT 2013 PRECEDENT FOLLOWS THE LEGISLATIVE MANDATE THAT REQUIRES FINDINGS.

1. The VLA[2] statute and this Court's precedence requires findings be made before declaring a litigant vexatious, and a legal and factual sufficiency standard of review is compulsory.

Unambiguously, this Court's 2013 opinion identifies the necessity of the trial court's duty to make findings before declaring a litigant vexatious, *Amir-Sharif v. Quick Trip Corp*, 416 S.W.3d 914, 918 (Tex. App.-Dallas 2013, no pet.)(section 11.054 requires the trial court to make evidentiary findings), Tex. Civ. Prac. & Rem. § 11.054, and those findings are reviewed for legal and factual sufficiency. The Opinion evidently relied on an outdated 2006 opinion, *Willms*[3], which is inapplicable[4] in this case.

The Dallas County District Attorney who frequently defends public servants from vexatious litigants regularly produces orders dismissing

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[2] *See*, TEX. CIV. PRAC. & REM. CODE §§ 11.001–11.104 (Vexatious Litigants) ("VLA" or "Chapter 11")

[3] *Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796, 802 (Tex. App.—Dallas 2006, pet. denied)

[4] In *Willms*, the missing findings were held harmless as there was only one theory presented to know what findings the trial court presumed to have made. But in this instant case, regardless of the Opinion's factual error stating otherwise, SIM presented many, many theories in a 383 page, twice supplemented motion.

frivolous lawsuits. And as you might suspect, those orders include the necessary findings mandated by the Legislature. (Exhibit A).

It will be an error of law to solely use the abuse of discretion standard if the rehearing is denied and this Opinion is not withdrawn.

This Court's so very recent opinions, authored by Justices' Whitehall[5] and Carlyle[6] identify that a *de novo* standard is first used to resolve questions of law and those of statutory construction, then followed by factual and legal sufficiency or abuse of discretion reviews.

2. This Court has no jurisdiction to make-up and provide the requisite original findings of fact, and didn't.

Reading the Opinion carefully, the Court only *concludes* "that the record as a whole supports a finding 'there is not a reasonable probability that [Beasley] will prevail in the litigation against [SIM].'" But if the correct standard of review was used, the record also shows SIM did not meet its burden to prove that Beasley cannot prevail in his litigation. Multiple conclusions can come from this record.

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[5] *Kelly v. Issac*, No. 19-00813-cv, (Tex.App.—Dallas, August 17, 2020)(statutory interpretations are reviewed *de novo*)

[6] *Weiss v. State*, No. 18-00958-CV(Tex.App.—Dallas, July 29, 2020)(statutory interpretations are reviewed *de novo*)

The Opinion does though correctly state the prohibition against this Court substituting its judgment for that of the trial court. A court of appeals has no jurisdiction to make original findings of fact, and it cannot be judge and jury in an endeavor to determine original facts.

3. SIM did not heed the trial judge's warning and the failed filed findings are fatal forever.

The trial judge warned and gave SIM a hint of the technical particulars of a VLA dismissal, but they apparently did not listen.

> I'll give you a hint. In O'Connor's the first case listed in the note, Amir Sharif versus Quick Trip, that appeal was out of Judge Hoffman's Court, but I got the case, so I read the whole file. And part of the point of the Amir Sharif is it was very -- it's a very technical -- it's not a very long rule or statute but it's a very, very technical one. R.R.1 14:15-22.

The order SIM prepared, Appendix C, did not include any "findings", and this Court cannot "find" in the record that Beasley could not reasonably prevail in the litigation, thus creating a fatal flaw—similar to an injunction without the requisite findings[7]. The December 11, 2018, order declaring Beasley a vexatious litigant is void, and of no effect.

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[7] *See*, *InterFirst Bank San Felipe, N.A. v. Paz Constr. Co.*, 715 S.W.2d 640, 641 (Tex. 1986) (per curiam)(The requirements of rule 683 are mandatory, and "an order granting a temporary injunction that does not meet them is subject to being declared void and dissolved.")

4. Similarly, Beasley's right to trial by jury is inviolate, unless explained why he lost it

Keep in mind too, Beasley invoked his right under the Texas Constitution to have questions of fact be tried by a jury, and not by any judge. [C.R. 13]. Not only was that right summarily taken away from him, the trial court would not say why.

The Supreme Court criticizes and reverses trial judges who take fact issues away from juries without saying why. *See*, *In re Columbia Medical Center of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204 (Tex.2009)(orig. proceeding). The Court's premise is simple enough and, on first glance, compelling: public confidence in the judicial system will be enhanced if trial courts explain the reasons for their rulings. *Id.* at 216. Providing broad statements such as 'in the interest of justice' and 'the statutory elements are satisfied in all respects', [C.R. 1259], Appendix C, like SIM tried to do, is not sufficiently specific.

Since the requisite findings of fact are gone forever, review by rehearing is necessitated, and Beasley's appeal Issue #1 be sustained.

5. Defendants waived any defense that Beasley has no standing to pursue his personal damages from SIM, Burns and O'Bryan

Furthermore, nowhere does the trial court or Opinion specifically find that Beasley had no probability to prevail on his alleged $2M in tort damages he personally suffered from business disparagement and tortious interference by SIM and Burns with "Beasley's contracts" through his company, Netwatch Solutions, which Beasley is 100% owner.

SIM simply made a legal argument to defend against claims that "he doesn't have standing to assert it". R.R.1 50:24 – 51:15.

Certainly, no court has no jurisdiction over a claim made by a plaintiff who has no standing to assert it, *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012), because standing is jurisdictional, it cannot be waived. *See Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005).

But just recently, in *Pennington v. Cypress Aviation*, 05-19-00345-CV (Tex.App.—Dallas April 9, 2020, no writ)(J. Osborne mem. Opinion) this Court held that a claim that a party lacks standing must be raised in a plea of abatement. Tex. R. Civ. P. 93(3). A defect of parties is waived

unless raised by a verified pleading. *Allison v. Nat'l Union Fire Ins. Co.*, 703 S.W.2d 637, 638 (Tex.1986) (per curiam); see *Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex.1996) ("We have not hesitated in previous cases to hold that parties who do not follow rule 93's mandate waive any right to complain about the matter on appeal.")

The Opinion cites no jurisdiction bars to Beasley pursuing his claims, and Beasley can easily prove-up damages he personally sustained as 100% owner of a company that SIM and Burns took action to destroy.

Likewise, SIM has waived its complaints and Beasley has standing to pursue his derivative claims against Burns and O'Bryan. SIM and the Opinion provides no legal argument that a derivative suit for ultra-vires acts against directors in a nonprofit corporation may not be maintained.

The trial court abused its discretion in finding Beasley a vexatious litigant and dismissing his lawsuit as there is no finding Beasley could not prevail on his tort claims. Correction of the Opinion by rehearing is necessitated, and Beasley's appeal Issues #1 and #4 be sustained.

B. THE OPINION FAILED TO USE THE PROPER LEGAL INSUFFICIENCY AND DE NOVO STANDARDS OF REVIEW, CREATING AN ERROR AT LAW, WHERE THE STATUTE DOES NOT ALLOW SECURITY TO COVER A NON-PREVAILING PARTY'S LITIGATION COSTS AND NONE OF THE ANDERSEN FACTORS WERE USED CONSIDERED, CREATING AN ILLEGAL, $400,064 FINANCIAL BAR TO JUSTICE, 40 TIMES THE USUAL AMOUNT

The Opinion cited Beasley's displeasure with this Court's prior holding of *Drum v. Calhoun*, but on reflection, the harm Beasley suffered was from the trial court, and not from the prior law enunciated by this Court.

The American rule in our legal system is that each party must pay its own attorney's fees and expenses, win or lose, unless a statute or contract provides otherwise. The VLA does NOT provide that a plaintiff declared vexatious pays the legal costs for the defendant, but instead requires that plaintiff furnish "security" to benefit the moving defendant.

With the VLA, the moving defendant may recover its costs *only* if the plaintiff's case is dismissed on the merits. Tex. Civ. Prac. & Rem. 11.055(c). The security is to assure payment of the moving defendant's *reasonable* expenses, including attorney's fees, *Id.* So therefore which attorney fees are applicable under the security, and which are not

present a mixed question of law and fact. *CA Partners v. Spears*, 274 S.W.3d 51, 81 (Tex. App.-Houston [14th Dist.] 2008, pet. denied).

Texas law to prove-up attorney fees is well known,[8] and the reasonable fees that attorneys might charge to quickly dismiss a frivolous lawsuit under Rule 91a or by summary judgment would generally be less than $15,000. And as the OCA website reveals, the orders declaring Texas litigants vexatious generally require a security amount of $10,000, or less.

The Andersen factors[9] mandate the trial court consider several factors, but in Beasley's case, SIM provided no sworn testimony or any evidence at all. SIM simply suggested[10] the court to make the security amount an eye-popping $422,000, allegedly based on what SIM paid defending the 2016 non-suited Dallas lawsuit, resulting in the highest amount in state history, 40-x times higher than most litigants.

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[8] *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 484 (Tex. 2019)

[9] *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 818 (Tex. 1997)

[10] "We are going to suggest that the bond be $422,000, which is not a random number, it's a number that is recent based upon the attorneys' fees that have been expended to date in this case." R.R.1 62:20-23.

The Opinion did not rely on the correct standard of review, as the VLA does not authorize paying damages, debts, or past or advanced litigation costs, but instead only an amount to protect a defendant to recover its costs to dismiss frivolous lawsuits. There was no evidence showing $422,064, the amount in the order, was reasonable or necessary to seek a dismissal of Beasley's claims, and again, the trial court made no findings as such. *cf.* District Attorney's order which lists the security cost as "being reasonably necessary" Exhibit A.

The evidence was legally insufficient to support a $400,064 security amount, it was entered as an abuse of discretion, the amount is unconscionable, unreasonable, and ordered in a capricious manner, without reference to the guiding principles for determining attorney fees and litigation costs. *See*, *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex.1998).

Correction of the Opinion by rehearing is necessitated, and Beasley's appeal Issues #12 be sustained.

C. THE OPINION MAKES TWO (2) MATERIAL ERRORS OF FACT WHICH LED TO AN IMPROPER LEGAL CONCLUSION.

1. SIM did not pursue just one VLA theory, as the Opinion erroneously states

The Opinion has a fundamental, material Error of Fact[11] on page 15, which is conclusively contradicted by the record. SIM sought to declare Beasley a vexatious litigant under multiple theories, and not just one as the Opinion states.

Conclusively contradicting the Opinion, SIM actually claimed,

> "Peter Beasley is a vexatious litigant pursuant to both CPRC § 11.054(1) and (2)." [C.R. 671] [C.R. 679] [C.R. 681],

and SIM claims Beasley had nine failed litigations and not just five.

This error is material as it leaves Beasley and this Court guessing on what grounds and which failed litigations, if any, the court found to be proven. The error led this Court to make the wrong legal conclusion that the trial court's error in failing to make findings was harmless.

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[11] "Similarly here, the basis for SIM's motion was VLA section 11.054(1), that Beasley maintained at least five litigations in the seven-year period preceding the date of the motion." The Opinion, p. 4.

2. It's mathematically impossible that Beasley asserted most of his 13 claims in this lawsuit in the 3 claims of the original lawsuit.

The Opinion has a fundamental, material Error of Fact[12] on page 2 of the Opinion, conclusively contradicted by the record.

Beasley's original Dallas County lawsuit had 3 claims. [C.R. 41]. The subject lawsuit under appeal has 13 claims. [C.R. 638 - 647], Appendix B. It is impossible that *most* of thirteen (13) claims were pled in an original three (3) claims. In particular, the original lawsuit had no 1) defamation claims, 2) derivative claim against Nellson Burns, nor 3) any derivative claim against Janis O'Bryan.

This error is material as it tends to support the Court's conclusion that Beasley already nonsuited most of these same claims, leading to an incorrect perception that the claims are weak, or incapable of recovery.

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[12] "Beasley filed this suit in Collin County district court against Society of Information Management, Dallas Area Chapter ("SIM"), Janis O'Bryan, and Nelson Burns on November 30, 2017, alleging claims for breach of contract, fraudulent inducement, defamation, "breach of duties," and due process violations, asserting derivative claims on SIM's behalf, and seeking declaratory and injunctive relief." ***Beasley had already asserted most of these claims*** *against SIM* in a Dallas County lawsuit that he voluntarily dismissed on October 5, 2017." The Opinion, p. 2.

D. THE OPINION IS DISTORTED RACIALLY, IN A DISRESPECTFUL WAY.

Women named Leslie, Kris, Alex, Randy, and Taylor live a life often mistaken to be men. And if those women face sexual harassment or gender discrimination in the workplace, omitting their femaleness in written descriptions of such conflicts can lead to a material distortion.

Likewise, Peter Beasley is not a common name for a Black man, so he has likely lived a lifetime misidentified first as being White. So, in that regard, the Peters and Leslies of the world, and others with non-gender or non-racially biased names share a common bond.

Peter Beasley though unmistakably identifies himself as a Black man[13] in his operative *pro se* 2nd Amended Petition filed on February 22, 2018, filed in Collin County. He further states on the **second page**, "The Underlying Dispute":

> "This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a substantial give-away of member's dues to non-members who are friends of the board and 2) ***to stop the organization's discriminatory membership practices – to unfairly exclude minorities***, keeping them from advancement opportunities."
> [C.R. 630] Appendix B.

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[13] [C.R. 630]

Beasley's lawyer, Rogge Dunn, briefed the trial judge saying:

> "This case is about Peter Beasley's **attempts to achieve race and gender neutral membership admissions** process for the Society of Information Management's Dallas Area Chapter ("Defendant" or "SIM-DFW"), which touts itself as "the only national professional network that connects senior-level IT leaders with peers in their communities. As the first African-American elected to the Executive Committee of SIM-DFW, Mr. Beasley was and is well aware of the significant diversity issues within the science and technology fields." [C.R. 1089 - 1090].

As written, the Opinion unnecessarily humiliates Beasley. For instance, how could a judicial opinion concerning a victim of sexual harassment be dignified if it never identified the genders of the respective parties?

This lawsuit is unambiguously about the age-old, on-going conflict in America between Black and White people. Beasley's Summary of the Argument, the opening of his Argument, and Epilogue of his brief are filled with Black pain and racial overtones and "pain and hurt" that Black people in America endure over their lifetime.

The Opinion leaves out that Peter Beasley was the first Black person elected to the board of SIM. The Opinion, as drafted, is insensitive and distorts this four year legal conflagration to be some indignant sole

fighting to remain a member of a voluntary organization who clearly doesn't want him to belong.

Unfairly, and in disrespect to Beasley, the Court has not met its burden to address every issue necessary to final disposition of the appeal, Tex. R. App. P. 47.1, where Beasley's plight as a Black man integrating a historically all White board is unjustly omitted.

1. Dallas County puts Black people on the vexatious litigant list disproportionately

This State Court must be unaware that Dallas County puts Black people on the vexatious litigant list[14] in an alarming, "telling" disproportionate rate — 73% Black people to 27% White people since 2016. (see attached affidavit, Exhibit B[15]).

The Texas Office of Court Administration ("OCA") maintains the list of Vexatious Litigants, publishing the name, date and originating county. For 2018, the year Beasley was tentatively added to the list, and for 2019, and 2020 following years, the George Allen Courthouse

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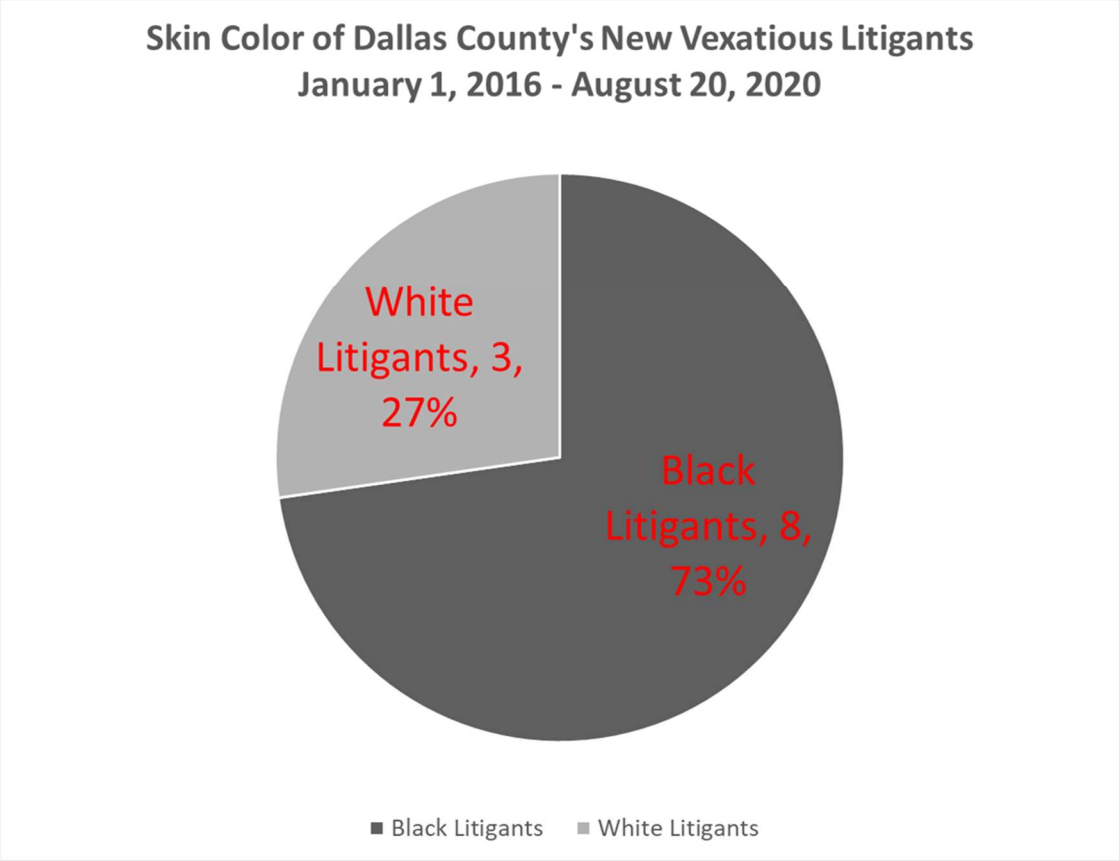
[14] https://www.txcourts.gov/judicial-data/vexatious-litigants/

[15] Beasley contemporaneously files a motion for leave of court to provide evidence of pattern bias which was previously unavailable.

has adjudicated six people to be vexatious litigants, and the pattern is 67% Black — where people with black skin are added to the list twice as often as White people.

The frequency Black people are ushered on the vexatious litigant list in Dallas County is even more alarming considering that most plaintiffs who avail themselves to the benefits of the civil justice system are White. Beasley appears to be the only Black person in Dallas County the OCA identifies as having "appealed", where many people give-up when trying to fight systemic discrimination and racism.



One-hundred percent (100%) of the women Dallas County placed on the vexatious litigant list for the past 3 ½ years are Black women[16]. Of the five (5) Black men added, three (3) are over 60 years old[17].

Dallas County Vexatious Litigants: 1/12016 to September 8, 2020

Litigant	Race	Date	Case	Court
Alvester Coleman	Black	8/6/2020	DC-20-09073	14th
Jules Stuer	White	2/28/2020	DC-19-16060	298th
Shanta Claiborne	Black	6/14/2019	DC-19-03933	192nd
James Rowe	Black	2/13/2019	JC-18-01005	304th
Patrick Jones	White	12/17/2018	DC-18-05511-D	95th
Peter Beasley	Black	12/11/2018	DC-18-05278	191st
Yolanda Williams	Black	10/11/2017	DC-17-08050	162nd
Samuel Gross	Black	5/19/2017	PR-15-04382-2	Probate Court #2
Steven Aubrey	White	2/2/2017	DC-16-12693	116th
Rose Duru	Black	4/18/2016	DC-16-00496	68th
Tracy Nixon	Black	4/14/2016	DF1601234	301st

Black people becoming disproportionally condemned onto the vexatious litigant list for the rest of their lives, especially at a late stage in their lives, bears evidence of the near limitless discretion in dismissing lawsuits of litigants who are ensnared facing a VLA trap.

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[16] Shanta Claiborne, Yolanda Williams, Rose Duru
[17] Peter Beasley, Alvester Coleman, Samuel Gross

V. PRAYER

Beasley prays this court cite Appellees to respond, that this court grant the rehearing and withdraw its original opinion, and reverse and remand this cause of action for further proceedings.

Beasley seeks an order vacating the December 11, 2018, Prefiling Order and June 11, 2019, Order of Dismissal, as the trial court abused its discretion in finding plaintiff a vexatious litigant. Beasley requests the court inform the Office of Court Administration to remove Beasley from the vexatious litigant list.

Beasley prays for general relief.

Respectfully
_/s/Peter Beasley_____
Peter Beasley, Plaintiff – Appellant
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170
pbeasley@netwatchsolutions.com

VI. CERTIFICATE OF COMPLIANCE

Appellant, Peter Beasley, hereby certifies the word-limited sections of this document contain 3,561 words, per Rule 9.4.

Dated: September 14, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

VII. CERTIFICATE OF SERVICE

Plaintiff-Appellant, Peter Beasley, hereby certifies that on September 11, 2020, the attached document was served on the Appellees through the court's electronic filing system.

Dated: September 14, 2020

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

Comparative Order

Cause No. DC-19-03933

SHANTA Y. CLAIBORNE	§	**IN THE DISTRICT COURT**
	§	
VS.	§	**DALLAS COUNTY, TEXAS**
	§	
DALLAS COUNTY TREASURER	§	**192nd JUDICIAL DISTRICT**

ORDER ON VEXATIOUS LITIGANT MOTION

On June 14, 2019, the Court considered the *Vexatious Litigant Motion* (*Motion*) filed by Defendant Dallas County Treasurer Pauline Medrano (Defendant), against Plaintiff Shanta Y. Claiborne, also known as Shanta Claiborne and Shanta Yvonne Claiborne (Plaintiff). Defendant appeared by and through the Criminal District Attorney of Dallas County. Plaintiff, who is acting pro se, was given proper notice of the hearing and **did/did not appear**.

The Court takes judicial notice that Defendant's *Motion* was originally filed on April 8, 2019.

After considering the evidence submitted by Defendant, the arguments of counsel, and all pleadings and documents on file with the Court, the Court is of the opinion that the *Motion* is well-taken and should be GRANTED.

The Court finds that Plaintiff is a plaintiff who has commenced or maintained a litigation, as defined in section 11.001(2) of the Texas Civil Practice and Remedies Code, and that Defendant is a person against whom Plaintiff has commenced or maintained a litigation as defined by section 11.001(1) of the Civil Practice and Remedies Code.

The Court finds that Defendant's *Motion* was timely filed under section 11.051(1) of the Civil Practice and Remedies Code.

The Court finds that there is no reasonable probability that Plaintiff will prevail in the current litigation before the Court.

The Court finds that Plaintiff has, under section 11.054(1) of the Texas Civil Practice and Remedies Code, in the seven (7) year period immediately preceding the filing of Defendant's *Motion*, commenced, prosecuted, or maintained, in propria persona, at least five litigations other than in small claims court that have been finally determined adversely to Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Defendant's *Vexatious Litigant Motion* is hereby GRANTED.

Comparative Order

IT IS FURTHER ORDERED that the Court declares Plaintiff Shanta Y. Claiborne, also known as Shanta Claiborne and Shanta Yvonne Claiborne, to be a vexatious litigant under Chapter 11 of the Texas Civil Practice and Remedies Code.

IT IS FURTHER ORDERED that under section 11.055 of the Texas Civil Practice and Remedies Code, Plaintiff must furnish security in the amount of $ 1,000 for the benefit of Defendant, which sum is reasonably necessary to assure payment to Defendant of Defendant's reasonable expenses incurred in or in connection with the litigation commenced, caused to be commenced, or maintained by Plaintiff.

IT IS FURTHER ORDERED that reasonable security shall consist of cash to be paid in the registry of the Court for the benefit of Defendant, or a bond in favor of Defendant filed with the Clerk of the Court undertaken by persons who demonstrate ownership of liquid and unencumbered assets that are non-exempt under federal or state law of at least twice the amount of the security ordered to be furnished by the Court, payable for the benefit of Defendant, subject only to Plaintiff's prevailing in a final determination of her claims as set forth in her pleadings on file with the Court.

IT IS FURTHER ORDERED that before any bond provided by Plaintiff shall be accepted, an application for the approval of said bond shall be filed with notice to Defendant, and at hearing upon such application, the Court shall determine the adequacy of the undertaking.

IT IS FURTHER ORDERED that if Plaintiff fails to post adequate security with the Court within 30 days of the signing of this *Order*, Plaintiff's suit will be dismissed in its entirety pursuant to section 11.056 of the Texas Civil Practice and Remedies Code.

IT IS FURTHER ORDERED that if Plaintiff timely provides the security herein required and the litigation is later decided on the merits against Plaintiff, Defendant shall have recourse to the security furnished under this order.

IT IS FURTHER ORDERED that Plaintiff is prohibited from filing, *in propria persona*, any new litigation in a court in this State without the written permission of a local administrative judge in the jurisdiction where she attempts to file such litigation. The local administrative judge may condition prefiling permission on the furnishing of security for the benefit of defendant(s) or other conditions as provided by Subchapter B of Chapter 11 of the Texas Civil Practice and Remedies Code.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to notify the Office of Court Administration of this Court's declaration of Shanta Y. Claiborne, also known as Shanta Claiborne and Shanta Yvonne Claiborne, as a vexatious litigant.

Exhibit A

IT IS FURTHER ORDERED that this suit shall remain in abatement until Plaintiff complies with this order or until it is dismissed by further order of this Court.

A violation of this *Order* may be punished by contempt of court in addition to other remedies provided by the Texas Civil Practice and Remedies Code.

DATE: June 14, 2019

Craig Stout
PRESIDING JUDGE

Comparative Order

Exhibit A

No. 05-19-00607-CV

PETER BEASLEY, Appellant, v. SOCIETY FOR INFORMATION MANAGEMENT, ET. AL, Appellees.	§ § § § § § § § § §	IN THE 5th DISTRICT COURT COURT OF APPEALS DALLAS, TEXAS

OPPOSED MOTION FOR LEAVE OF COURT TO PROVIDE PREVIOUSLY UNAVAILABLE EVIDENCE TO AID DETERMINATION OF THE APPEAL

TO THE HONORABLE JUSTICES OF SAID COURT:

COMES NOW, Appellant, Peter Beasley, ("Beasley"), pursuant to Rule 10.2, and states the following:

1. August 28, 2020, this Court affirmed the trial court's judgment, in a detailed 30-page opinion, authored by Justice Osborne. With this opinion, Appellant is entitled to file a Motion for Rehearing by Monday, September 14, 2020. The Opinion affirmed the trial court's December 11, 2018, judgment declaring Appellant a vexatious litigant. The Office of Court Administration (OCA) administers the list of those litigants, and the list is available online, https://www.txcourts.gov/judicial-data/vexatious-litigants/.

2. To aid the finding of justice, Appellant requests leave of court to provide the additional relevant information from ¶ 6, below which was previously unavailable.

3. Below is a listing from the OCA website, sorted to identify the people added to the list since 2016 from Dallas County, as updated September 9, 2020.

Office of Court Administration
List of Vexatious Litigants
Subject to Prefiling Orders under Section 11.101, Civil Practice and Remedies Code

Vexatious Litigant						
Last Name	First Name	Middle Name	Date	Cause #	Court	Comment
Coleman	Alvester		8/6/2020	DC-20-09073	14th	
Stuer	Jules	Dylan	2/28/2020	DC-19-16060	298th	
Claiborne	Shanta	Y.	6/14/2019	DC-19-03933	192nd	
Rowe	Jamers	Laray	2/13/2019	JC-18-01005	304th	
Jones	Jason	Patrick	12/17/2018	DC-18-05511-D	95th	
Beasley	Peter		12/11/2018	DC-18-05278	191st	on appeal
Williams	Yolanda		10/11/2017	DC-17-08050	162nd	
Gross	Samuel	R.	5/19/2017	PR-15-04382-2	Probate Court #2	
Aubrey	Steven	B.	2/2/2017	DC-16-12693	116th	
Duru	Rose	Adanma	4/18/2016	DC-16-00496	68th	
Nixon	Tracy		4/14/2016	DF1601234	301st	
Aubrey	Steven	B.	3/25/2016	DC-15-11685	14th	

4. Appellant, Peter Beasley, has reached-out to all of these individuals either by phone or e-mail, or through on-line records to determine their ethnicity. Appellant, he is a Black man. I've spoken with Alvester Coleman, Tracy Nixon and Yolanda Williams to confirm their race. Through police and incarceration records, I've confirmed the ethnicity of Jason Jones, Jules Stuer, and James Rowe. Through on-line websites, social media and phone converations, I have researched the ethnicity of Shanta Claiborne, Samuel Gross, Rose Duru, and Steven Aubrey.

5. The list of Dallas County vexatious litigants since January 1, 2016, by race is listed below.

Office of Court Administration								
List of Vexatious Litigants								
Subject to Prefiling Orders under Section 11.101, Civil Practice and Remedies Code								
Vexatious Litigant		Race						
Last Name	First Name	Black	White	Date	Cause #	Court	County	Comment
Aubrey	Steven		1	3/25/2016	DC-15-11685	14th	Dallas	
Nixon	Tracy	1		4/14/2016	DF1601234	301st	Dallas	
Duru	Rose	1		4/18/2016	DC-16-00496	68th	Dallas	
Gross	Samuel	1		5/19/2017	PR-15-04382-2	obate Court	Dallas	
Williams	Yolanda	1		10/11/2017	DC-17-08050	162nd	Dallas	
Beasley	Peter	1		12/11/2018	DC-18-05278	191st	Dallas	on appeal
Jones	Jason		1	12/17/2018	DC-18-05511-D	95th	Dallas	
Rowe	Jamers	1		2/13/2019	JC-18-01005	304th	Dallas	
Claiborne	Shanta	1		6/14/2019	DC-19-03933	192nd	Dallas	
Stuer	Jules		1	2/28/2020	DC-19-16060	298th	Dallas	
Coleman	Alvester	1		8/6/2020	DC-20-09073	14th	Dallas	
		8	3	11				
		73%	27%					

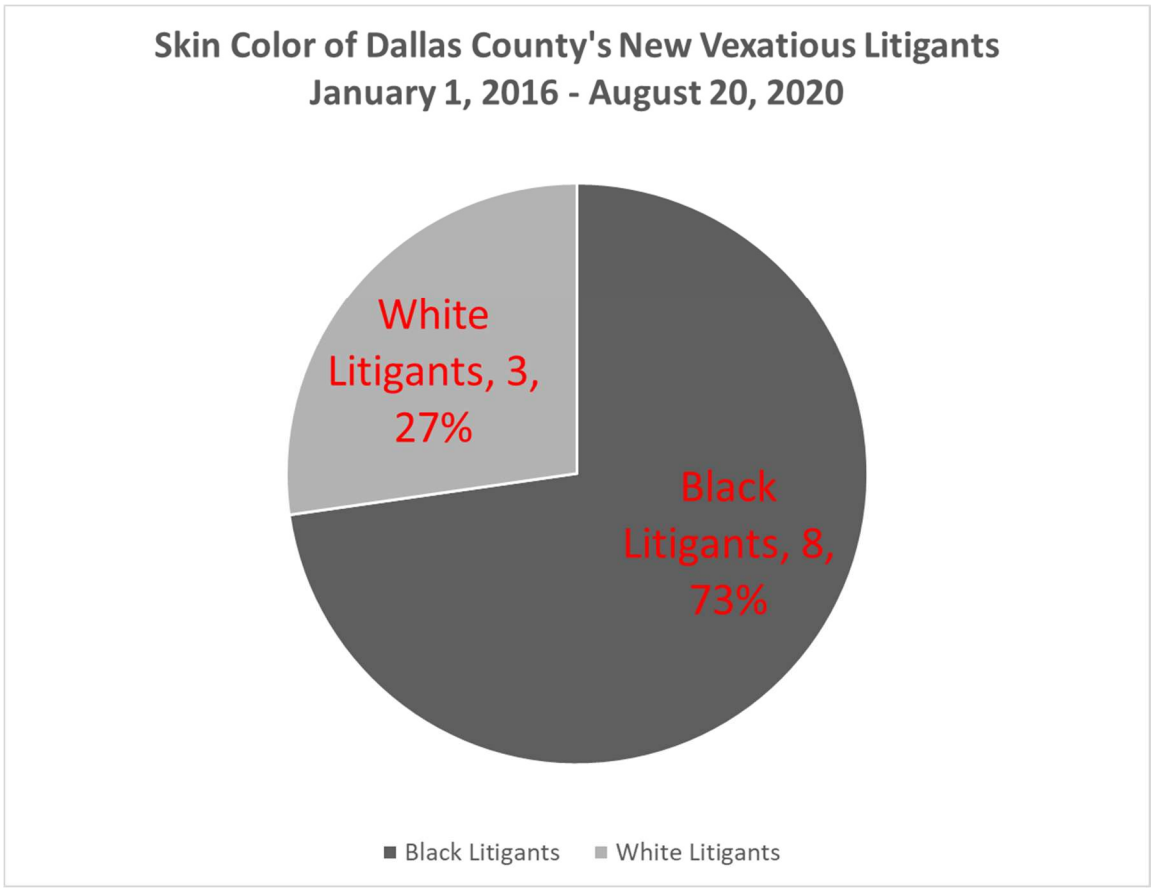


Exhibit B

ARGUMENT AND AUTHORITIES

6. The underlying lawsuit is about race discrimination. Beasley, was the first Black person elected to the Board of Directors of the Society of Information Management for the Dallas Area Chapter (SIM). The record before this court has Appellant's live, 2nd Amended Petition, which lists the "Underlying Dispute" to be:

> This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a give-away of member's dues to non-members who are friends of the board and 2) ***to stop the organization's discriminatory membership practices*** – to unfairly exclude minorities, keeping them from advancement opportunities.

7. SIM is a Texas non-profit corporation which prohibits money being funneled to members. And, it is against public policy to withhold membership and expel members based on race and gender discrimination.

8. As this court identified in its Opinion affirming the underlying judgment, Appellant argued that the Texas Vexatious Litigant statute is unconstitutionally vague, which unfairly allows attorneys and courts to discriminate against Black litigants.

9. The U.S. Supreme Court said it best:

> The vagueness of a law not only withholds fair notice of what those regulated may do, but also leaves *unwarranted discretion in the hands of enforcement authorities*. E.g., Grayned v. City of Rockford, 408 U.S. 104, 108-09 & n. 5, 92 S.Ct. 2294, 2298-99 & n. 5, 33 L.Ed.2d 222 (1972).

Implicit Bias is Real – Unequal Protection under the Law

10. People have innate, unconscious biases. Today, we see demonstrations daily worldwide in protest to how Black people are treated in America. We've all now seen our President Donald J. Trump scoff June 19, 2020, at "the anger and pain" Black Americans face throughout their lifetime as victims of "White Privilege."

11. This Court and perhaps the George Allen courthouse judiciary may be unaware of the overwhelming pattern of how Black people are ushered onto the Texas Vexatious Litigant list – through unequal protection under the law.

12. In the trial court Beasley alleged that the Texas Vexatious Litigant statute was unconstitutionally vague. But, the trial court would not hear Beasley. And now this Court, in its August 28, 2020, Opinion failed to address any of Beasley's nine specific constitutional challenges.

13. The four year pattern bias evidence in ¶ 6 to September 2020, covering the period before Beasley was added to the list, up to when this Court

affirmed the judgment was of course unavailable at the time Beasley was required to perfect his appeal.

14. Racial discrimination is often proven looking backwards at patterns which make a *prima facie* case that unfair, discriminatory practices may exist. Retroactive pattern data exposed a long lines of cases of discriminatory venire men selection[1] to eliminate Black people from juries, and Texas death penalty sentences[2] that unequally executed Black people.

15. To show the relevance of the requested information, first, Beasley, as an African-American, identifies as part of a group that is a recognizable, distinct class, historically singled out for different treatment under the laws, as written or as applied. *See, Castaneda v. Partida*, 430 U.S. 482, 492-95 & n. 12, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977).

16. Second, the pattern data uncovered in ¶ 6, *supra.* of the 3x times number of Black people added to the Texas Vexatious Litigant list from Dallas County than White people makes out a *prima facie* case that unequal protection

[1] *Cassell v. Texas*, 339 U. S. 282, 286-287 (1950)

[2] *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)(A study of capital cases in Texas from 1924 to 1968 reached the following conclusions: "Application of the death penalty is unequal: most of those executed were poor, young, and ignorant.)

or application of the law exists, whether it is conscious or unconscious. *See*, *Hernandez v. Texas*, 347 U. S. 475, 478-479 (1954).

17. This court denying Beasley appeal on August 28, 2020, has made the requested evidence relevant to the issues on appeal, and leave of court is requested to add this evidence in support of his rehearing motion and in support of the existing claims on appeal.

WHEREFORE, Beasley requests this court grant leave of court to include the Table and Chart evidence from ¶ 6, *supra.* in Beasley's contemporaneously filed Motion for Rehearing, in the interest of justice.

Plaintiff prays for general relief.

Respectfully submitted,

_/s/Peter Beasley____
Peter Beasley, pro se
P.O. Box 831359
Richardson, TX 75083-1359
(972) 365-1170
pbeasley@netwatchsolutions.com

Certificate of Conference

I hereby certify that on the 11th day of September 2020, the parties conferred on the motion, and it is opposed.

_/s/Peter Beasley
Peter Beasley

DECLARATION OF VERIFICATION

STATE OF TEXAS §

COUNTY OF DALLAS §

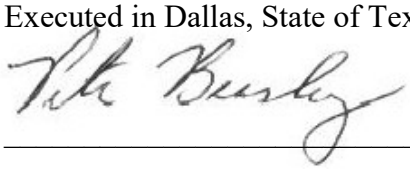
My first, middle, and last name is Peter Morell Beasley, my date of birth is September 20, 1958, and my address is 12915 Fall Manor, Dallas, Texas, 75243, United States. I declare under penalty of perjury that the foregoing statements are true and correct.

1. My name is Peter Beasley. I am over the age of twenty-one years, of sound mind, have never been convicted of any felony offense and I am fully competent and authorized to make this declaration. I have personal knowledge of the facts stated herein the Motion due to my personal involvement in the events and occurrences set forth.

2. I am the Appellant in the above entitled and numbered matter.

3. I have read the above and foregoing Motion; that every statement of fact are within my personal knowledge, and are true and correct.

Executed in Dallas, State of Texas, on the 11th day of September, 2020.



Declarant

Certificate of Service

I hereby certify that on the 11th day of September 2020, a true copy of the foregoing instrument was served on opposing counsel for the defendants by electronic means and the electronic transmissions were reported as complete.

/s/Peter Beasley
Peter Beasley

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 46179155
Status as of 9/14/2020 8:08 AM CST

Associated Case Party: Peter Beasley

Name	BarNumber	Email	TimestampSubmitted	Status
Peter Beasley		pbeasley@netwatchsolutions.com	9/11/2020 7:50:27 PM	SENT

Associated Case Party: Society of Information Management

Name	BarNumber	Email	TimestampSubmitted	Status
Peter S. Vogel	20601500	pvogel@foley.com	9/11/2020 7:50:27 PM	SENT
Sona Julianna Garcia	24045917	sjgarcia@grsm.com	9/11/2020 7:50:27 PM	SENT
Robert Bragalone		bbragalone@grsm.com	9/11/2020 7:50:27 PM	SENT

VIII. APPENDIX

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AFFIRMED and Opinion Filed August 28, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00607-CV

PETER BEASLEY, Appellant
V.
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN AND NELLSON BURNS, Appellees

On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Osborne

Appellant Peter Beasley, appearing pro se, appeals from the trial court's orders declaring him a vexatious litigant and dismissing his claims with prejudice for failure to post the required security. We overrule Beasley's issues and affirm the trial court's orders declaring Beasley a vexatious litigant and dismissing his claims with prejudice.

BACKGROUND

The facts are well-known to the parties, and we do not repeat them here except as necessary to explain the basic reasons for our decision. TEX. R. APP. P. 47.4.

Beasley filed this suit in Collin County district court against Society of Information Management, Dallas Area Chapter ("SIM"), Janis O'Bryan, and Nelson Burns[1] on November 30, 2017, alleging claims for breach of contract, fraudulent inducement, defamation, "breach of duties," and due process violations, asserting derivative claims on SIM's behalf, and seeking declaratory and injunctive relief. Beasley had already asserted most of these claims against SIM in a Dallas County lawsuit that he voluntarily dismissed on October 5, 2017.

SIM filed a motion to transfer venue on January 16, 2018, an original answer on January 22, 2018, and a motion to declare Beasley a vexatious litigant on April 19, 2018. The Collin County trial court granted the motion to transfer venue to Dallas County.

The trial court granted SIM's motion to declare Beasley a vexatious litigant by order dated December 11, 2018. *See* TEX. CIV. PRAC. & REM. CODE §§ 11.001–11.104 (Vexatious Litigants) ("VLA" or "Chapter 11"). The trial court also ordered Beasley to furnish security in the amount of $422,064.00. When Beasley failed to furnish security by the date set in the court's order, the trial court signed a final order of dismissal and take nothing judgment on June 11, 2019. Beasley now appeals, challenging the trial court's declaration that he is a vexatious litigant and the dismissal of his lawsuit.

[1] We refer to appellees collectively as "SIM" except where individual reference is necessary.

STANDARD OF REVIEW

We review the trial court's determination that Beasley was a vexatious litigant under an abuse of discretion standard. *Drum v. Calhoun*, 299 S.W.3d 360, 364 (Tex. App.—Dallas 2009, pet. denied). Under that standard, we are not free to substitute our own judgment for the trial court's judgment. *Id.* A trial court abuses its discretion if it acts in an arbitrary or capricious manner without reference to any guiding rules or principles. *Id.*

DISCUSSION

In Chapter 11, the Texas Legislature "sought to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Id.* at 364–65. The purpose behind the statute was to curb vexatious litigation by requiring plaintiffs found by the court to be "vexatious" to post security for costs before proceeding with a lawsuit. *Id.* at 365.

Beasley asserts twenty-five issues challenging the trial court's vexatious litigant order and judgment. He divides the issues into five categories: (1) inapplicable statutory use and legal sufficiency (Issues 1–5), (2) evidentiary challenges (Issues 6–12), (3) frauds on the court (Issues 13–14), (4) constitutional challenges (Issues 15–23), and (5) summary (Issues 24–25). We address all of Beasley's issues although we group some of them differently.

1. Applicability of Chapter 11 (Issue 2)

In his second issue Beasley argues he did not "commence" or "maintain" a litigation pro se within the meaning of Chapter 11 because he was a "counter-defendant" once SIM (1) moved to transfer venue to Dallas and (2) paid the filing fee in Dallas County. *See* VLA § 11.001(5) (defining "plaintiff" as "an individual who commences or maintains a litigation pro se"). Beasley contends that by taking these actions, SIM "consented to being sued" in a lawsuit that Beasley "did not file, prosecute or maintain." Beasley further argues that because SIM moved to transfer venue and paid the Dallas County filing fee, SIM was not a "defendant" under Chapter 11, defined in section 11.001(1) as "a person . . . against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation." *Id.* § 11.001(1).

Both Beasley's original petition and his operative petition filed after the case was transferred to Dallas County begin with Beasley's assertion that "Plaintiff, Peter Beasley, ("Beasley") files this . . . Petition, complaining of Defendant" SIM. Both petitions state "claim[s] for relief" including "monetary relief over $1,000,000," "non-monetary relief," declaratory and injunctive relief, and "imposition of a receiver to take control over" SIM. SIM is identified in both petitions as "defendant." We conclude that Beasley both initiated the suit and "maintain[ed]" it as "plaintiff" against SIM as "defendant" within the meaning of section 11.001, subsections (1) and (5). We decide Beasley's second issue against him.

2. Timeliness of SIM's motion (Issue 3)

SIM filed its Chapter 11 motion more than 90 days after filing its motion to transfer venue, but less than 90 days after filing its answer. In his third issue, Beasley contends SIM's motion was untimely under section 11.051, which requires a defendant to file a motion for an order determining the plaintiff is a vexatious litigant "on or before the 90th day after the date the defendant files the original answer or makes a special appearance." VLA § 11.051.

SIM filed a pleading entitled "Defendants' Motion to Transfer Venue" on January 16, 2018. The body of the motion presents SIM's argument that Beasley filed the same claims in a 2016 lawsuit in Dallas County requesting the same relief, and the case should be "transferred back to Dallas County." In the "conclusion and prayer," however, SIM requests that Beasley:

> take nothing by way of his claims, that Defendants recover their attorneys' fees, costs and expenses as allowed by law, that this cause be transferred back to the 162nd Judicial District Court of Dallas County, Texas and for such other and further general relief, at law or in equity, as the ends of justice require and to which the evidence may show it justly entitled.

Six days later, on January 22, 2018, SIM filed a pleading entitled "Subject to Defendants' Motion to Transfer Venue, Defendants' Original Answer, General Denial and Affirmative Defenses." The substance of this pleading was, in fact, a general denial of Beasley's claims and assertions of affirmative defenses, concluding with a similar prayer.

Relying on civil procedure rule 85, Beasley argues that SIM's motion to transfer venue was an "answer" within the meaning of section 11.051, rendering SIM's vexatious litigant motion untimely. Rule 85 provides that "[t]he original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel . . . ." TEX. R. CIV. P. 85. Beasley also contends that under rule of civil procedure 71 we must construe the motion to transfer venue as an answer. *See* TEX. R. CIV. P. 71 (misnomer of pleading does not render it ineffective, and court will treat pleading as if properly named); *Johnson v. State Farm Lloyds*, 204 S.W.3d 897, 899 n.1 (Tex. App.—Dallas 2006), *aff'd*, 290 S.W.3d 886 (Tex. 2009) (citing rule 71 and construing motion to compel an appraisal as a motion for summary judgment).

Courts have construed rule 85 broadly when determining whether a pleading constitutes an "answer" or "appearance" entitling a defendant to notice of a trial setting as a matter of due process. *See, e.g., Tunad Enters., Inc. v. Palma*, No. 05-17-00208-CV, 2018 WL 3134891, at *5 (Tex. App.—Dallas June 27, 2018, no pet.) (mem. op.) (citing cases for proposition that Texas courts "have been reluctant to uphold default judgments where some response is found in the record"); *In re R.K.P.*, 417 S.W.3d 544, 549 (Tex. App.—El Paso 2013, no pet.) ("If a timely answer has been filed, or the respondent has otherwise made an appearance in a contested case, she is entitled to notice of the trial setting as a matter of due

process."). The question here is different: whether we must construe a document—entitled and in substance a "motion to transfer venue"—as a rule 85 "answer," when the defendant has also timely filed an answer.

Here, SIM's vexatious litigant motion was filed within the time period expressly provided in section 11.051, that is, "on or before the 90th day after the defendant files the original answer or makes a special appearance." Although under civil procedure rules 85 and 86, SIM could have included its motion to transfer venue in its answer, it was not required to do so. *See* TEX. R. CIV. P. 85 (answer "may" consist of motions to transfer venue), TEX. R. CIV. P. 86.1 (objection to venue must be made "prior to or concurrently with any other plea"). The applicable rules and statutory provisions required SIM (1) to file its motion to transfer venue "prior to or concurrently with any other plea, pleading or motion," (2) to timely file its answer, and (3) to file its vexatious litigant motion on or before the 90th day after filing its answer. *See* TEX. R. CIV. P. 86.1 and 99.b.; VLA § 11.051. We conclude SIM met these requirements and timely filed its vexatious litigant motion. We decide Beasley's third issue against him.

3. Effect of SIM's nonsuit (Issue 13)

In his thirteenth issue, Beasley argues that by taking a nonsuit of its counterclaims, SIM necessarily nonsuited its vexatious litigant motion. He contends there was a "fraud on the court" because SIM's nonsuit offer was "conditional" on

the trial court's denial of Beasley's motion to reconsider the order declaring him a vexatious litigant, and there is no authority permitting "conditional" nonsuits.

SIM's counterclaims were for a declaratory judgment regarding the propriety of its board of directors' actions and for defamation per se. At the end of the hearing on Beasley's motion to reconsider the vexatious litigant order, the trial court took the motion under advisement, and SIM's counsel announced:

> MR. BRAGALONE: Yes, Your Honor, I have my client's authority now to nonsuit with prejudice the counterclaims that the defendants filed, so I'm presenting you with what's styled the final order of dismissal and take-nothing judgment—
>
> THE COURT: And that's pending my resolution [of Beasley's motion to reconsider].
>
> MR. BRAGALONE: Yes, Your Honor. So if you were to deny the motion to reconsider with a nonsuit, now it becomes a final judgment.

The record reflects the court's intent to take Beasley's motion under advisement, which it did. Neither the court nor SIM's counsel expressed any intent or understanding that SIM was withdrawing its motion to declare Beasley a vexatious litigant. The comments were made at the end of a two-hour hearing at which SIM opposed Beasley's motion to reconsider the trial court's prior ruling on that same motion. The record reflects that SIM sought denial of Beasley's motion to reconsider, dismissal of Beasley's lawsuit, and a final judgment. No fraud on the court is apparent from the record. *See Odam v. Texans Credit Union*, No. 05-16-00077-CV, 2017 WL 3634274, at *8 (Tex. App.—Dallas Aug. 24, 2017, no pet.) (mem. op.) (general complaint of "fraud on the court" without citation to legal

authority or "specific, lawful objections made in the trial court" presented nothing for appellate review). We decide Beasley's thirteenth issue against him.

Having concluded that SIM's motion to declare Beasley a vexatious litigant was properly before the trial court, we next consider Beasley's issues regarding the motion's substance.

4. Reasonable probability of prevailing on claims in this lawsuit (Issues 4 and 5)

Beasley's claims in this lawsuit arise from his removal from SIM's board of directors in April 2016. SIM is "a national, professional society of information technology (IT) leaders which seeks to connect senior level IT leaders with peers, provide opportunities for collaboration, and provide professional development." *See Beasley v. Soc'y of Info. Mgmt.*, No. 05-17-01286-CV, 2018 WL 5725245, at *1 (Tex. App.—Dallas Nov. 1, 2018, pet. denied) (mem. op.). In his operative petition, Beasley alleges that "[t]his lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws . . . ." In its motion to declare Beasley a vexatious litigant, SIM explained that Beasley's "claims all arise out of the same factual nexus," that SIM "was 'wasting' funds by engaging in philanthropy and support of local STEM education efforts in the Metroplex," "authorizing a 'give away' of member dues in contravention of its Articles of Incorporation." SIM's executive committee decided to seek Beasley's resignation based on this and other disputes, but before they could do so, Beasley filed suit. After

Beasley's initial *ex parte* TRO expired, SIM's executive board met and expelled Beasley from SIM.

Beasley has alleged claims for breach of contract (Counts 1 and 3 of his operative petition), fraudulent inducement (Count 2), defamation (Count 5), violation of his due process rights (Count 7), tortious interference with contractual relationships (Counts 8–11), business disparagement (Count 12), and breach of duties and ultra vires acts by individual defendants Burns and O'Bryan (Count 13). He has also requested an injunction against ultra vires acts of SIM (Count 4) and declaratory relief (Count 6). Counts 4 and 13 are alleged as derivative claims on SIM's behalf. Count 12 is alleged by Beasley on behalf of Netwatch Solutions, Inc. as its sole owner.

On appeal, Beasley argues that SIM did not offer any sworn testimony or other evidence to support its contention that Beasley could not prevail on his suit, citing *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914, 920–21 (Tex. App.—Dallas 2013, no pet.) (reversing and remanding for further proceedings where defendants offered evidence of litigation history but no evidence showing why Amir-Sharif could not prevail in the litigation). Beasley contends that five of his claims are "unchallenged":

- SIM's board was "illegally constituted,"
- there were "numerous dates and acts of defamation,"
- SIM breached oral contracts to provide insurance and to request Beasley's resignation before instituting expulsion proceedings,

- fraudulent inducement on the same grounds as the breach of contract claims, and

- "derivative suits against O'Bryan and Burns."

Beasley concludes that the evidence is legally insufficient to support the trial court's finding that there is not a reasonable probability he will prevail on his claims. *See* VLA § 11.054.

In support of its motion alleging that "there is not a reasonable probability" that Beasley will prevail on his claims in this litigation, *see id.*, SIM attached exhibits A through S, consisting of pleadings, orders, affidavits, and deposition excerpts in this and related cases, and additional exhibits were admitted into evidence at the hearing. SIM addressed each of Beasley's causes of action pleaded in his operative petition, arguing and citing supporting evidence that:

- SIM had already prevailed on Beasley's "core claims" under the November 3, 2017 judgment rendered in a previous lawsuit Beasley filed in 2016 against SIM (identified below as "LN 7");

- Beasley's claims that SIM breached contracts allowing him to resign from the Board and to pay his legal expenses if he sued SIM were not likely to succeed because (1) Beasley's demands precluded SIM from requesting his resignation and (2) any agreement to pay legal fees did not cover suits by Beasley against SIM;

- Beasley's claims for tortious interference and defamation were based on communications among the lawyers and parties in the course of the litigations between Beasley and SIM and are not actionable as a result; and

- Beasley's remaining claims belong to his company, Netwatch, but Netwatch is not a party to this suit, and in any event, SIM provided

evidence that the contract with which Beasley alleges SIM interfered was paid in full for the two years in question.

SIM also argues that the doctrine of judicial nonintervention applies to all of Beasley's claims relating to his expulsion from SIM's board of directors. *See, e.g.*, *Dickey v. Club Corp. of Am.*, 12 S.W.3d 172, 176 (Tex. App.—Dallas 2000, pet. denied) ("Traditionally, courts are not disposed to interfere with the internal management of a voluntary association.").

In his previous lawsuit against SIM arising out of his expulsion, Beasley nonsuited his claims. *See Beasley*, 2018 WL 5725245, at *1. After he did so, that trial court rendered judgment on November 3, 2017, ruling that SIM prevailed on Beasley's declaratory judgment claims. *See id.* at *5. The claims addressed in that order on which SIM prevailed included Beasley's requests for declarations that:

- the April 19, 2016 meeting of SIM's executive committee that resulted in Beasley's expulsion from SIM violated SIM's bylaws, due process protections under the Texas Constitution, and applicable provisions of the Texas Business Organizations Code, so that Beasley's expulsion was void and of no effect and that his status as a board member and a member of SIM were and are unaffected;

- the acts of SIM's executive committee since April 19, 2016, are void; and

- SIM's charitable giving and philanthropy violate SIM's bylaws and articles of incorporation.[2]

[2] Beasley's operative petition from his 2016 lawsuit against SIM was included in the attachments to SIM's vexatious litigant motion in this case, as well as the November 3, 2107 "Order Granting Attorney's Fees to Defendant as Prevailing Party on Declaratory Judgment Claims" in that case.

We conclude that the record as a whole supports a finding that "there is not a reasonable probability that [Beasley] will prevail in the litigation against [SIM]." VLA § 11.054. The underlying factual basis for his claims is his expulsion from a voluntary association, a matter in which courts "are not disposed to interfere." *See Dickey*, 12 S.W.3d at 176. Although Beasley correctly argues that there are exceptions to this rule, such as "when the actions of the organization are illegal, against some public policy, arbitrary, or capricious," *see id.*, one trial court has already found that the strength of SIM's motion for summary judgment on Beasley's claims was one of the reasons for Beasley's October 2017 nonsuit in his previous litigation against SIM. *See Beasley*, 2018 WL 5725245, at *2. Further, Beasley attempts to assert claims on behalf of a non-party corporation and seeks to recover damages for statements made in the course of litigation. In *Jenevein v. Friedman*, 114 S.W.3d 743, 745 (Tex. App.—Dallas 2003, no pet.), we explained that any communication in the course of a judicial proceeding is absolutely privileged and cannot constitute a basis of a damages action for defamation. The privilege extends to "any statement" made by counsel, parties, or witnesses, and attaches to all aspects of the proceedings, including statements made in open court, pre-trial hearings, depositions, affidavits, and pleadings or other papers. *Id.* The trial court did not abuse its discretion by finding that SIM met its burden under section 11.054 to show that there is not a reasonable probability that Beasley will prevail in the litigation.

See Drum, 299 S.W.3d at 364. We decide Beasley's fourth and fifth issues against him.

5. Criteria for vexatious litigant declaration (Issues 1, 6–11, 20–23)

Under Chapter 11, a party moving for a vexatious litigant declaration may show that a plaintiff has, in the seven-year period prior to filing the motion, "commenced, prosecuted or maintained" at least five "litigations," defined as "a civil action commenced, maintained, or pending in any state or federal court." VLA §§ 11.054(1); 11.001. The litigations must have been finally determined adversely to the plaintiff, or permitted to remain pending at least two years without having been brought to trial or hearing, or determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. *Id.* § 11.054(1)(A)–(C).

SIM relies on nine[3] litigations. Beasley has challenged each litigation for lacking some or all of the statutory requirements. He has also complained of the trial court's failure to file fact findings, and he has challenged the admissibility of SIM's evidence of all of the litigations. We consider these latter questions first.

[3] In addition to the seven litigations that were the basis for SIM's motion, SIM offered evidence in the trial court of two additional litigations. Beasley challenges all nine of these litigations in his appellate briefing.

A. Necessity of fact-findings (Issue 1)

In his first issue, Beasley contends the trial court erred by failing to file findings of fact at his request. *See* TEX. R. CIV. P. 296 ("In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law."). In *Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796, 802 (Tex. App.—Dallas 2006, pet. denied), an appeal of a vexatious litigant finding, we explained that "[w]hile findings of fact and conclusions of law may have been helpful, they were not required because the vexatious litigant issue was not tried in a conventional bench trial." We cited *IKB Industries (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 442 (Tex. 1997), where the court explained, "[t]he purpose of [civil procedure] Rule 296 is to give a party a right to findings of fact and conclusions of law finally adjudicated after a conventional trial on the merits before the court. In other cases findings and conclusions are proper, but a party is not entitled to them." In *Willms*, we concluded that even if the trial court erred by failing to file findings, the error was harmless because there was "only a single ground for determining the Willmses vexatious litigants before the court"—repeated litigation attempts under VLA section 11.054(2)—"and the Willmses did not have to guess at the reasons for the district court's ruling." *Willms*, 190 S.W.3d at 802–03.

Similarly here, the basis for SIM's motion was VLA section 11.054(1), that Beasley maintained at least five litigations in the seven-year period preceding the

date of the motion. *See* VLA § 11.054(1). As in *Willms*, we conclude that error, if any, was harmless. *See Willms*, 190 S.W.3d at 802–03. We decide Beasley's first issue against him.

B. Admissibility of evidence (Appellant's Brief Part II)

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *In re J.P.B.*, 180 S.W.3d 570, 575 (Tex. 2005) (per curiam). We will uphold the ruling if there is any legitimate basis in the record to support it. *Ten Hagen Excavating, Inc. v. Castro-Lopez*, 503 S.W.3d 463, 490 (Tex. App.—Dallas 2016, pet. denied). To reverse an erroneous evidentiary ruling, an appellant must both establish error and show that the error probably caused an improper judgment. TEX. R. APP. P. 44.1; *Thawer v. Comm'n for Lawyer Discipline*, 523 S.W.3d 177, 183 (Tex. App.—Dallas 2017, no pet.).

Beasley argues that because SIM failed to provide certified, self-authenticated, or sworn copies of the prior litigations, there was no evidence to meet 11.054(1)'s requirements. VLA § 11.054(1). At trial, SIM offered into evidence a volume of exhibits containing opinions, orders, and other court filings in the litigations at issue. Beasley objected at trial that none of "the alleged public records are properly authenticated." The trial court overruled Beasley's objection, stating that the documents were self-authenticating. *See generally* TEX. R. EV. 902 (evidence that is self-authenticating). SIM cites *Williams Farms Produce Sales, Inc. v. R&G Produce Co.*, 443 S.W.3d 250, 259 (Tex. App.—Corpus Christi-Edinburg

2014, no pet.), for the proposition that documents from government websites are self-authenticating under rule of evidence 902(5). *See* TEX. R. EV. 902(5) (official publications by public authorities are self-authenticating).

We conclude that Beasley's blanket objection to over 800 pages of exhibits, some of which were publicly-issued orders and opinions of this Court, was insufficient to preserve a specific objection to any particular exhibit the trial court admitted into evidence. "'A general objection to a unit of evidence as a whole, . . . which does not point out specifically the portion objected to, is properly overruled if any part of it is admissible.'" *Stovall & Assocs., P.C. v. Hibbs Fin. Ctr., Ltd.*, 409 S.W.3d 790, 797 (Tex. App.—Dallas 2013, no pet.) (quoting *Speier v. Webster College*, 616 S.W.2d 617, 619 (Tex. 1981)). "Absent a specific objection, the complaining party waives any argument to the improper admission or consideration of the evidence." *Id.* We conclude that the trial court did not abuse its discretion in admitting the evidence.

C. Challenges to individual litigations (Issues 6–11, 20–23)

Next, we consider the litigations SIM alleges Beasley "commenced, prosecuted, or maintained" in the seven-year period before SIM filed its vexatious litigant motion. *See* VLA § 11.054(1) (vexatious litigant criteria). A "litigation" is "a civil action commenced, maintained, or pending in any state or federal court." *Id.* § 11.001(2). The trial court was required to find at least five litigations meeting the statutory criteria in order to find Beasley to be a vexatious litigant under section

11.054, subsection (1). *Id.* § 11.054(1). These litigations must have been finally adversely determined to Beasley, or permitted to remain pending at least two years without having been brought to trial or hearing, or determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. *Id.* § 11.054(1)(A)–(C).

i. Number of litigations (Issue 6)

SIM contends there are nine litigations meeting the statutory criteria:

1. *Peter Beasley v. Susan M. Coleman and Randall C. Romei*, No. 1:13-cv-1718 in the United States District Court for the Northern District of Illinois ("LN [Litigation No.] 1");

2. *Peter Beasley v. John Krafcisin, John Bransfield, Ana-Maria Downs, and Hanover Insurance Co.*, No. 3:13-cv-4972-M-BF in the United States District Court for the Northern District of Texas, Dallas Division ("LN 2");

3. *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, No. 05-15-01156-CV, 2016 WL 5110506 (Tex. App.—Dallas Sept. 20, 2016, pet. denied) (mem. op.) ("LN 3");

4. *In re Peter Beasley*, No. 05-15-00276-CV, 2015 WL 1262147 (Tex. App.—Dallas Mar. 19, 2015) (orig. proceeding) (mem. op.) ("LN 4");

5. *In re Peter Beasley*, No. 05-17-01365-CV, 2017 WL 6276006 (Tex. App.—Dallas Dec. 11, 2017) (orig. proceeding) (mem. op.) ("LN 5");

6. *In re Peter Beasley*, No. 17-1032 in the Supreme Court of Texas ("LN 6");

7. *Peter Beasley v. Society for Information Management*, No. DC-16-03141 in the 162nd Judicial District Court of Dallas County ("LN 7");

8. *In re Peter Beasley*, No. 05-18-00382-CV, 2018 WL 2126826 (Tex. App.—Dallas May 8, 2018) (orig. proceeding) (mem. op.) ("LN 8"), and

9. *In re Peter Beasley*, No. 05-18-00395-CV, 2018 WL 1919008 (Tex. App.—Dallas Apr. 24, 2018) (orig. proceeding) (mem. op.) ("LN 9").

Beasley challenges each of the nine[4] as failing to meet one or more of the statutory criteria.

ii. Pro se (Issue 7)

Beasley argues that only LN 7 has "any reference that Beasley commenced, prosecuted, or maintained [the] litigations pro se, which is required." *See* VLA § 11.054(1). Beasley did not raise this objection in the trial court, and does not now argue that he was, in fact, represented by counsel in any proceeding other than LN 7. Beasley argues that at the time LN 7 was dismissed by the trial court, he was represented by counsel. SIM contends the VLA contemplates that a pro se litigant may at different times in a proceeding lose or gain counsel by providing that a plaintiff "has commenced, prosecuted, or maintained" litigations "as a pro se litigant." VLA § 11.054(1). We concluded in *Drake v. Andrews*, 294 S.W.3d 370, 374–75 (Tex. App.—Dallas 2009, pet. denied), that the VLA's language "is broad

[4] Beasley lists two additional prior litigations, both original proceedings in this Court captioned *In re Peter Beasley, Relator*, but argues they do not meet the VLA's requirements because he filed them after SIM filed its VLA motion. *See In re Beasley*, No. 05-18-00553-CV, 2018 WL 2315964, at *3 (Tex. App.—Dallas May 22, 2018, orig. proceeding) (mem. op.) (writs of injunction and mandamus denied); *In re Beasley*, No. 05-18-00559-CV, 2018 WL 2316017, at *1 (Tex. App.—Dallas May 22, 2018, orig. proceeding) (mem. op.) (mandamus denied). Because SIM does not rely on them to meet the VLA's requirements, we do not discuss them further.

enough to reach all vexatious litigants, whether represented by counsel or not." That Beasley was at times represented by counsel does not render the VLA inapplicable to his litigations. *See id.* We decide Beasley's seventh issue against him.

iii. Adverse determination (Issues 10, 20, and 23)

Beasley argues that LN 1 and LN 2 were not determined adversely to him because the courts "did not have jurisdiction to render any judgment." In LN 1, Beasley sued his former attorney and the judge presiding over an Illinois probate proceeding in which Beasley was the former representative of the estate. *See Beasley v. Coleman*, 560 Fed. App'x 578, 579 (7th Cir. Feb. 21, 2014) (Mem.). A federal district court and a federal circuit court on appeal determined that under the "probate exception" to federal jurisdiction, the district court lacked jurisdiction over Beasley's claims. *See id.* at 580. The district court's judgment also reflects that Beasley's claim against Coleman, the Cook County judge, initially was dismissed "on the grounds that it was filed frivolously."[5]

LN 2, filed in the Northern District of Texas, also arose from an Illinois probate matter. The district court granted defendants' motions to dismiss Beasley's claims for injunctive and declaratory relief under the *Younger* abstention doctrine and his remaining claims for improper venue. *See Beasley v. Krafcisin*, No. 3:13-

[5] The appeals court noted that "[a]fter Beasley moved to correct the judgment to a dismissal without prejudice and to reinstate the conspiracy claim against Romei, the district court granted Beasley's motion in part. It amended its order to specify that the dismissal was 'for want of jurisdiction without determining the merits of any putative claim in the complaint,' but the court declined to revive the conspiracy claim." 560 Fed. App'x at 579.

CV-4972-M-BF, 2014 WL 4651996, at *4 (N.D. Tex. Sept. 17, 2014) (Order Accepting Findings, Conclusions, and Recommendation of the United States Magistrate Judge), *aff'd per curiam*, 609 Fed. App'x 215 (5th Cir. July 7, 2015) (mem.). Beasley cites no authority for the proposition that cases dismissed for lack of jurisdiction cannot constitute adverse determinations under VLA section 11.054(1)(A). SIM relies on *Leonard v. Abbott*, 171 S.W.3d 451, 459–60 (Tex. App.—Austin 2005, pet. denied), where the court counted several litigations dismissed for lack of subject matter jurisdiction in meeting the VLA's numerosity requirement. SIM also points out that in any event, a litigation determined by a court to be frivolous under state or federal law separately qualifies under VLA subsection 11.054(1)(C). We conclude that the trial court did not abuse its discretion by concluding that LN 1 and LN 2 were determined adversely to Beasley.

Next, Beasley argues that LN 3 and LN 7 were not determined adversely to him because they were voluntary nonsuits. SIM offered evidence, however, that LN 3 was Beasley's appeal of an order dismissing his case with prejudice on Beasley's own motion; in other words, Beasley appealed the granting of his own motion for nonsuit. *See Beasley v. Richardson*, No. 05-15-01156-CV, 2016 WL 5110506, at *1 (Tex. App.—Dallas Sept. 20, 2016, pet. denied) (mem. op.). LN 7 is another, previously-filed suit against SIM arising from the same circumstances that Beasley complains of in this case. *See Beasley*, 2018 WL 5725245, at *1 (appeal of attorney's fees award). Although Beasley nonsuited his claims on the merits, he

continued to litigate, unsuccessfully, the trial court's award of attorney's fees to SIM after the trial court found the nonsuit had been taken to avoid an unfavorable ruling on the merits. *See id.* at *1–2. Beasley's appeal of both judgments is evidence to support a finding that both were determined adversely to him. *See also Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 700 (Tex. App.—El Paso 2011, no pet.) ("An action which is ultimately dismissed by the plaintiff, with or without prejudice, is nevertheless a burden on the target of the litigation and the judicial system, albeit less of a burden than if the matter had proceeded to trial." [internal quotation and citation omitted]). Consequently, Beasley's voluntary nonsuits of LN 3 and LN 7 do not preclude those litigations from counting under section 11.054(1).

Next, Beasley contends that LN 4, 5, 6, 8 and 9, original proceedings in this Court or the Supreme Court of Texas, were not "finally determined adversely" to him because they were filed in the course of ongoing lawsuits and were entirely within the appellate court's discretion. But as the court in *Retzlaff* reasoned, "a person who seeks mandamus relief commences a civil action in the appellate court." *Id.* Although the mandamus proceedings arose from ongoing lawsuits, they were separate original proceedings that did not challenge the trial court's final decision in the underlying case or relate to the merits of the underlying case. *See id.* Each was determined adversely to Beasley. *See* LN 4, 2015 WL 1262147, at *1 (challenge to ruling allowing withdrawal of deemed admissions, mandamus denied); LN 5, 2017

WL 6276006, at *1 (challenge to denial of motion to disqualify and recuse trial judge, mandamus denied); LN 6 (same, in Texas Supreme Court, mandamus denied); LN 8, 2018 WL 2126826, at *1 (challenge to order granting motion to transfer venue, mandamus denied); LN 9, 2018 WL 1919008, at *1 (complaint that trial court refused to hold hearing on rule 12 motion to show authority, mandamus denied); *cf. Goad v. Zuehl Airport Flying Cmty. Owners Ass'n, Inc.*, 04-11-00293-CV, 2012 WL 1865529, at *4 (Tex. App.—San Antonio May 23, 2012, no pet.) (mem. op.) (direct appeals and attempted removal to federal court were not separate litigations for purposes of VLA).[6] We conclude that LN 4, 5, 6, 8, and 9 were determined adversely to Beasley. We decide issues 10, 20, and 23 against Beasley.

iv. Time pending without trial or hearing (Issue 8)

Beasley argues there is no evidence that any of the litigations remained pending for at least two years without having been brought to trial or hearing. *See* VLA § 11.054(1)(B). As we noted, SIM relies on this subsection for its inclusion of LN 7.

SIM argues that LN 7, filed in March 2016, meets the requirements of subsection (1)(B) because Beasley "permitted [LN 7] to remain pending at least two

[6] Beasley argues there is no evidence that LN 7 was finally determined adversely to him, because at the time the trial court granted SIM's vexatious litigant motion, the matter was still pending on appeal. VLA § 11.054(1)(A). SIM, however, relies on subsection (1)(B) of section 11.054 for its inclusion of LN 7, not subsection (1)(A). *See* VLA § 11.043(1)(B) (litigation permitted to remain pending at least two years without trial or hearing). Consequently, we discuss this complaint in the next section.

years without having been brought to trial or hearing." *See* VLA § 11.054(1)(B). SIM argues that "the claims filed by Beasley in March 2016 were not brought to trial or hearing before March 2018." In LN 7, Beasley filed a notice of nonsuit in October, 2017, moved to disqualify and recuse the trial judge the following month, and filed his notice of appeal in December 2017. This Court resolved the appeal against Beasley in November 2018, and Beasley filed a petition for review in the Texas Supreme Court that was denied in December 2019. *See Beasley*, 2018 WL 5725245, at *1–2. Beasley's motion for rehearing in the Texas Supreme Court was denied in February 2020. We conclude that Beasley did not bring the claims he filed in March 2016 to trial in LN 7, and, as we have discussed above, filed substantially the same claims in this lawsuit in Collin County in November 2017. We decide Beasley's eighth issue against him.

Having decided Beasley's first, sixth through eleventh,[7] and twentieth through twenty-third issues against him, we conclude that the trial court did not abuse its

[7] In his ninth issue, Beasley argues there is no evidence of any litigations that were determined by a trial or appellate court to be frivolous or groundless under any law or rule. *See* VLA § 11.054(1)(C). As we have discussed, the court in LN 1 initially ruled that "The matter is dismissed with respect to Susan M. Coleman on the grounds that it was filed frivolously." The court of appeals' opinion reflects that the court subsequently amended its order at Beasley's request to specify that the dismissal was for want of jurisdiction "without determining the merits of any putative claim in the complaint." *See Beasley*, 560 Fed. App'x at 579. Regardless of whether this litigation also falls within VLA § 11.054(1)(C), we have already concluded that it was properly included in the count of litigations finally determined adversely to Beasley under VLA § 11.054(1)(B).

discretion by concluding that each of the nine litigations met one or more of VLA section 11.054(1)'s requirements.[8]

6. Required security and dismissal (Issues 12 and 25)

Beasley contends the trial court abused its discretion "in affixing a $422,032 security amount—the largest amount in state history without requiring any evidence." Beasley also argues the trial court erred by dismissing his lawsuit for failure to pay the bond. He argues: (1) no security should have been required, since he is not a vexatious litigant, and (2) under VLA section 11.055(c), the amount of security is limited to "defendant's reasonable expenses incurred in or in connection with" the litigation, and SIM did not offer evidence of same.

Subsection (a) of VLA section 11.055 provides that a court "shall" order the plaintiff to furnish security if the court determines, after hearing evidence, that the plaintiff is a vexatious litigant. VLA § 11.055(a). Subsection (c) governs the trial court's determination of the security's amount:

> The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a

[8] In his tenth and twentieth issues, Beasley makes additional arguments that there is no evidence he attempted to relitigate any litigations that were "finally determined" against him under subsection (2) of section 11.054. *See* VLA § 11.054(2). Subsection 11.054(2) provides an alternative method by which a movant may establish that a plaintiff is a vexatious litigant. Because we have concluded there was evidence to support the trial court's ruling under subsection 11.054(1), we need not consider whether any of the litigations also satisfies the requirements of subsection (2). Similarly, we need not consider Beasley's eleventh issue regarding the lack of evidence to support a finding that he has previously been declared a vexatious litigant. *See* VLA § 11.054(3). And in Beasley's twenty-first and twenty-second issues, he complains that transfers between courts should not count as adverse judgments. Because no transfer was so treated, we need not consider these issues.

> litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

VLA § 11.005(c); *see also Willms*, 190 S.W.3d at 805 (trial court is required to order plaintiff to furnish "security for the benefit of the moving defendant" if court determines plaintiff is vexatious litigant).

SIM argues that the security amount was based on the attorney's fees it incurred in LN 7, the first case filed by Beasley against SIM, before judgment was rendered on November 3, 2017. In that case, the trial court awarded SIM $211,032.02 in attorney's fees after finding that Beasley's nonsuit, filed immediately before the scheduled hearing on SIM's motion for summary judgment, was filed to avoid an unfavorable ruling on the merits of Beasley's claims. *See Beasley*, 2018 WL 5725245, at *1–2.

As we have explained, LN 7 arose out of the same facts underlying this lawsuit, specifically, Beasley's expulsion from SIM. *See id.* at *1. When this suit was filed, SIM faced the prospect of beginning again to defend against these claims, this time to their conclusion. Consequently, we conclude it was not an abuse of the trial court's discretion to use the fees SIM incurred in LN 7 as a guide to determine a reasonable amount of security to assure payment to SIM of its reasonable expenses incurred to defend against Beasley's claims in this lawsuit. *See Willms*, 190 S.W.3d at 805 ("[I]f the security is furnished and the litigation is dismissed on the merits, the moving defendant has recourse to the security.").

Beasley also argues that the trial court abused its discretion by dismissing the lawsuit. It is undisputed, however, that Beasley did not furnish the security within the time set in the trial court's order granting SIM's motion to declare Beasley a vexatious litigant. In that circumstance, VLA section 11.056 requires dismissal. *See* VLA § 11.056 ("The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order."); *Willms*, 190 S.W.3d at 805 (trial court must dismiss litigation if plaintiff fails to furnish security for moving defendant's benefit).

We decide issues 12 and 25 against Beasley.

7. Constitutional challenges to vexatious litigant statute (Issues 14–23)

Beasley contends the vexatious litigant statute is unconstitutional because he was denied hearings on his motion for SIM's attorneys to show authority under civil procedure rule 12 and his motion alleging extrinsic fraud, among other matters. He also argues the statute is unconstitutional because its criteria of five litigations in a seven-year period is unreasonable and arbitrary when applied to him. He contends he "demonstrates a pattern of zealous advocacy using properly filed original proceedings before a final judgment" has been rendered.

Beasley specifically criticizes this Court's opinion in *Drum*, arguing that it was applied to him in violation of his due process rights. *See Drum*, 299 S.W.3d at 369. In *Drum*, we overruled Drum's complaint that the trial court should have heard

and ruled on multiple motions he filed after the defendant filed a motion to declare Drum a vexatious litigant. *See id.* We explained,

> Under the vexatious litigant statute, on the filing of a timely motion to declare the plaintiff a vexatious litigant, "the litigation is stayed" until the motion is decided. TEX. CIV. PRAC. & REM. CODE ANN. § 11.052(a). Consequently, based on the record presented here, the trial court was required to rule on the vexatious litigant motions before it could reach Drum's motions. *Id.* And when those motions were granted, the litigation remained stayed as a matter of statutory law unless and until Drum posted the required security. *Id.* § 11.052(a)(2).

Drum, 299 S.W.3d at 369. Beasley argues that applying *Drum* here "[was] not fair" and violated his due process rights because it precluded him from "challeng[ing] issues directly related to the vexatious litigant hearing."

In *Leonard*, the court considered a challenge to the VLA's constitutionality. *See Leonard*, 171 S.W.3d at 457–58. The court reasoned that the VLA's "restrictions are not unreasonable or arbitrary when balanced against the purpose and basis of the statute." *Id.* at 457. Citing the VLA's purpose to restrict frivolous and vexatious litigation, the court explained that the VLA "does not authorize courts to act arbitrarily, but permits them to restrict a plaintiff's access to the courts only after first making specific findings that the plaintiff is a vexatious litigant based on factors that are closely tied to the likelihood that the incident litigation is frivolous." *Id.* The court noted that the plaintiff was not categorically barred from prosecuting his lawsuit, "but merely [was] required . . . to post security to cover appellees' anticipated expenses to defend what the circumstances would reasonably suggest is

a frivolous lawsuit." *Id.* Further, the VLA's requirement that plaintiffs obtain a prefiling order does not prohibit them from filing new lawsuits; they are "merely required to obtain permission from the local administrative judge before filing." *Id.* at 458 (citing VLA § 11.101–.102). The court concluded, "[t]he restrictions are not unreasonable when balanced with the significant costs of defending [the plaintiff's] likely frivolous lawsuits in the future." *Id.* This court reached a similar conclusion in *Dolenz v. Boundy*, No. 05-08-01052-CV, 2009 WL 4283106, at *3–4 (Tex. App.—Dallas 2009, no pet.) (mem. op.), rejecting the plaintiff's open courts, due process and equal protection challenges to the VLA. *See also Retzlaff*, 356 S.W.3d at 702–04 (same).

Similarly here, the trial court's order "did not categorically bar [Beasley] from prosecuting his lawsuit," *see Leonard*, 171 S.W.3d at 457, nor was Beasley barred from bringing matters "material to the ground" of SIM's VLA motion to the trial court's attention at the hearing, although the litigation was stayed. *See* VLA § 11.053(a), (b) (court shall conduct a hearing on the vexatious litigant motion, and "may consider any evidence material to the ground of the motion, including: (1) written or oral evidence; and (2) evidence presented by witnesses or by affidavit."). Matters not brought to the court's attention at the hearing could be pursued once Beasley posted security. *See Leonard*, 171 S.W.3d at 457.

We decide Beasley's issues 14 through 23 challenging the VLA's constitutionality against him.

8. Summary (Issue 24)

In his twenty-fourth issue, Beasley argues that the trial court abused its discretion in issuing a prefiling order because the trial court's underlying vexatious litigant declaration was unwarranted. *See* VLA § 11.101 (court may enter order prohibiting person from filing new litigation pro se without permission of administrative judge). Because we have decided Beasley's issues challenging the trial court's order finding Beasley to be a vexatious litigant against him, we also decide this issue against Beasley.

CONCLUSION

We affirm the trial court's December 11, 2018 order granting appellees' motion to declare Beasley a vexatious litigant and its June 11, 2019 "Final Order of Dismissal and Take Nothing Judgment."

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

190607F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

PETER BEASLEY, Appellant

No. 05-19-00607-CV V.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN AND NELLSON BURNS, Appellees

On Appeal from the 191st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-18-05278.
Opinion delivered by Justice Osborne. Justices Whitehill and Carlyle participating.

In accordance with this Court's opinion of this date, the trial court's December 11, 2018 Order Granting Defendants' Motion to Declare Peter Beasley a Vexatious Litigant and its June 11, 2019 Final Order of Dismissal and Take Nothing Judgment are **AFFIRMED**.

It is **ORDERED** that appellees Society of Information Management, Dallas Area Chapter; Janis O'Bryan and Nellson Burns recover their costs of this appeal from appellant Peter Beasley.

Judgment entered August 28, 2020

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Lynne Finley
District Clerk
Collin County, Texas
By LeAnne Brazeal Deputy
Envelope ID: 22710309

Cause No. 296-05741-2017

PETER BEASLEY Plaintiff	§	IN THE DISTRICT COURT OF
v.	§	COLLIN COUNTY, TEXAS
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS O'BRYAN, NELLSON BURNS	§	296th JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION

Plaintiff, Peter Beasley, ("Beasley") files this Second Amended Petition, complaining of Defendants, Society for Information Management, Dallas Area Chapter, Janis O'Bryan, and Nellson Burns, and states:

I. NATURE OF THE CASE

1. This is a contract dispute involving a voluntary professional business association's failure to honor its contract with a member, a member of its board of directors, and its resulting acts to defame and injure plaintiff, for which he seeks monetary damages, declaratory and injunctive relief.

2. Plaintiff also mounts a derivative suit on behalf of SIM Dallas against the individual defendants, Janis O'Bryan and Nellson Burns.

II. PARTIES

3. Plaintiff is Peter Beasley, an individual residing in Dallas County.

4. Defendant, Society for Information Management, Dallas Area Chapter ("SIM Dallas"), is a Texas nonprofit corporation and an Internal Revenue Code §501(c)(6) organization. Defendant operates across the entire North Texas region and has its official business address at P.O. Box 208, Frisco, TX, 75034, in Collin County.

5. Defendant. Janis O'Bryan, ("O'Bryan"), is an individual resident of Dallas County as is the current, past president of SIM.

6. Defendant. Nellson Burns, ("Burns"), is an individual resident of Dallas County, and is the current president of SIM.

III. DESIGNATIONS

A. Discovery Control Plan

7. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

B. Claim for Relief

8. Plaintiff seeks monetary relief over $1,000,000, and non-monetary relief.

9. Plaintiff seeks declaratory relief.

10. Plaintiff seeks injunctive relief and imposition of a receiver to take control over the Society of Information Management Texas corporation, to restore its operation to those within the laws of this state.

C. Jurisdiction

11. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

12. The Court has personal jurisdiction over defendants

a. Because the primary defendant is a resident/citizen/business organization formed under the laws of the State of Texas.

D. Mandatory Venue

13. Venue is proper in Collin County under Texas Civil Practice & Remedies Code section 15.002 (3) because, during the time the basis of the suit accrued, defendant's principal office in this state is in Collin County.

14. Venue is mandatory in Collin County in a suit for libel, under Texas Civil Practice & Remedies Code § 15.017 because Collin County is the principle office of the defendant, and plaintiff elects to sue in Collin County.

IV. THE UNDERLYING DISPUTE

15. This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a *substantial* give-away of member's dues to non-members who are friends of the board and 2) to stop the organization's discriminatory membership practices – to unfairly exclude minorities, keeping them from advancement opportunities.

V. FACTUAL BACKGROUND

16. Beasley's SIM Membership and Offices Held. Beasley is a member of SIM Dallas and has been a member in good standing of the organization since September 2005. For each of those years, Beasley paid dues to SIM Dallas. Total dues paid by Beasley to SIM were approximately $5,345.00. Beasley has volunteered hundreds of hours of his time to help SIM thrive. Beasley is also a Director serving on the SIM Dallas Executive Committee, ("Board"), and is the Membership Committee Chair, ("Membership Chair"). Beasley was first elected to the Board in November 2012, and reelected in 2013, 2013, and 2014. Beasley was elected for his second annual term as Chair on November 9, 2015, for the 2016 program year.

17. Beasley was the first African-American elected to SIM's Board in its history.

18. Contract Board Agreements. To secure and protect Beasley to serve in a legal, fiduciary role to the SIM Dallas, Beasley and SIM had an agreement beginning January 8, 2013, that SIM Dallas will a) cover Beasley's activities serving on the board under the insurance carried by the SIM organization, b) operate within the bylaws and organizational charter, and c) agreed to supervise Beasley's activities as a board member. In return, Beasley agreed to a) volunteer his time in service of the corporation, b) would resign if he was unable to perform his duties, c) accept the liabilities of being a director of a Texas corporation. In exchange for the insurance protection and contract of responsibilities defined in the bylaws to protect Beasley, he relied on that promise and agreed to take-on the personal financial liability for his actions working as a director of the corporation, and served on the board in 2013, 2014, 2015, and 2016.

19. Control of the SIM Board. The SIM Board has 10 voting members and 5 officers. Under the bylaws, the SIM Dallas Board is led by its CEO, the President. For 2016, the SIM President was Janis O'Bryan ("O'Bryan") and its President's elect was Nellson Burns ("Burns") – the 2017 and 2018 President of SIM Dallas.

20. Beasley's Advocacy to SIM and its Board. In his position as a Director and Membership Committee Chairman, Beasley observed numerous violations by SIM Dallas in following its bylaws. In his first year on the Board, Beasley successfully amended the bylaws to bring SIM into compliance with how it recertified members annually for continued membership. Beasley became staunch in support of following the bylaws within the Board, warning against: a) wasting and hording of

hundreds of thousands of dollars in corporate assets; b) allowing non-voting members of the Board to vote; c) constituting a board or directors in contravention of the bylaws, d) the failure of certain Board members to exercise independent professional judgment, rather than simply rubber-stamping the decisions of a few Board members who controlled the Board, e) the President (O'Bryan) appointing an individual to the board (Bouldin) without vote or approval of the board, f) and allowing a husband and wife to serve as members of the board. Beasley advocated appointment of a Parliamentarian, to have officers with access to the corporate funds (in excess of $400,000) to be bonded, and advocated the organization provide annual financial reports to the members.

21. Waste of SIM's Assets By Board. SIM Dallas is exempt from federal taxes, under IRS regulation 501(c)(6), as a Business League, (not as a 501(c)(3) charity). SIM's purpose as an organization is to further the education and professional support of its members.

22. SIM's Articles of Incorporation and its bylaws both specify the purpose for which the corporation is organized:

> The specific purpose and primary purpose is to foster the development of information systems for the improvement of the management performance of its members.

The Articles further provide that "this corporation shall not, except to an insubstantial degree, engage in any powers that are not in furtherance of the primary purpose of this corporation" and that "this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this corporation." Article I, Section 2 of SIM's current, September 9, 2013, bylaws lists five (5) activities to benefit members, none of which list the donation of SIM assets to aid others.

23. In spite of the founding documents, O'Bryan, Burns, and others have sought to run the organization as a philanthropic venture, and not a business league. Beasley objected and argued against such donation activity, which is contrary to SIM's organizational articles and its bylaws. Despite Beasley's ongoing objections, O'Bryan rebuffed Beasley, and announced her intention to force through such measures. Furthermore, several Directors have sought approval to use SIM's $402,188 available in cash assets to fund activities to benefit members, but O'Bryan blocked use of the funds for such proper purposes. Although Beasley attempted to work with other Board members to find a way to resolve the conflict, O'Bryan

refused to meet with or discuss the issues with Beasley. In February 2016, she began making false accusations against Beasley, removing responsibilities from him, and denying him permission to attend, on behalf of SIM, the national leader's conference.

24. Beasley, with the support of other board members, offer several valid options to resolve the dispute:

a. Hold transparent "charity events" so that any monies raised for philanthropy would be kept separate and distinct from member's assets, as was recommended by SIM National and other SIM Chapters;

b. Ask the members to vote-in a level of philanthropy (i.e. 10% of assets); or

c. Submit a vote to the members to eliminate the bylaw restriction to allow for "substantial" use of funds in ways as voted by the board,

but SIM Dallas would not allow these simple options to resolve the dispute.

25. Discriminatory Membership Practices. Beasley further advocated to the Board about its discriminatory membership practices, which resulted in minorities being under-represented in the SIM membership.

26. Beasley detected and documented a long-standing practice to keep SIM Dallas' membership to primarily consist of White Males only. Into the 2000's, the face of society, the information technology ranks and the people of North Texas have become more diverse. However, SIM Dallas' membership practices of the 2012 – 2016 era disproportionately tried to excluded women, India nationalists, Blacks (African-Americans, Africans), Middle-Easterners and Hispanic applicants.

27. **Under Beasley's term serving on and leading Membership, the SIM Dallas membership percentage of White Men dropped noticeably.**

28. Challenges to Beasley's membership recommendations mounted month by month in 2015 and 2016, with a stated complaint that Beasley does not "protect the brand". Beasley documented a practice by board members John Cole, Nellson Burns, and Patrick Bouldin, (who all had a business relationship with Nellson Burns), and others, to challenge India, Black, Hispanic, and Female candidates for membership. To ward-off non-voting members of the board from succeeding at discriminatory membership practices, on **March 18, 2016**, Beasley modified his committee's procedures to no longer accept challenges from non-voting members of the board.

29. **SIM Dallas then moved to expel Beasley**.

30. Improper and Void Expulsion of Beasley from SIM. March 2016, Burns, O'Bryan, and the other Officers on the Board, via e-mail exchange, decided to embark upon a campaign to rid SIM of Beasley. SIM invited Beasley to come to a downtown Dallas 8 a.m. meeting on March 24, 2016 (for the purpose of asking Beasley to resign, unknown to Beasley). However, at 6:00 a.m. the day of the scheduled meeting, Beasley received notice that the meeting had been cancelled. The next day, **March 25, 2016**, Beasley was informed via e-mail that SIM would hold a meeting of the Executive Committee on April 4, 2016, at 8:00 a.m. to seek Beasley's expulsion from SIM. No information was provided to Beasley on what he had done to cause his expulsion from membership in SIM.

31. In response to SIM Dallas' attempt to expel Beasley – without telling him why or asking first for his resignation – Beasley, March 29, 2016, Beasley sued SIM Dallas and sought and obtained a temporary restraining order in Dallas District Court, prohibiting his expulsion. Rather than meet and resolve the dispute, as Beasley asked to do, SIM Dallas removed the lawsuit to federal court.

32. In direct violation of the then valid Texas TRO, SIM Dallas met anyway on April 4, 2016, to discuss and plan the expulsion of Beasley. Although Beasley was still then a member of the Board, SIM Dallas intentionally excluded him from the meeting.

33. After expiration of the TRO while the lawsuit was in federal court, on April 13, 2016 at 9:17 p.m., Beasley received an e-mail, informing him that SIM Dallas intended to hold a meeting of the Executive Committee on April 19, 2016, at 8:00 a.m. to seek Beasley's expulsion. Again, no information was provided to Beasley on what he had done to cause his expulsion from membership in SIM Dallas. The notice for the meeting was legally improper and invalid because it provided Beasley less than the 7 days' notice required in the bylaws. On April 17, 2016, Beasley objected to the notice on this basis and he further objected to allowing others to attend by phone, as the meeting notice provided no option for attendance by phone. In his objection, he indicated he would attend if 1) he was told the reason he faced expulsion where he could defend his membership rights, and 2) the meeting was rescheduled with proper notice given – to potentially be represented by counsel.

34. Despite his objections, on April 19, 2016, Beasley was informed by e-mail that he had been expelled from SIM Dallas. SIM Dallas' minutes from the April 19,

2016, Executive Committee meeting indicated only ten members of the board were present at the meeting, which is not a quorum under SIM Dallas' bylaws and Texas law. Further, SIM Dallas used votes from non-voting members of the board who were illegally attending by phone to pretend they had enough votes to sustain expulsion. Accordingly, for many reasons, Beasley's purported expulsion from SIM Dallas was and is void.

35. After being the first African-American voted to the Board, Beasley became the ONLY member in the Chapter's 34+ year history to ostensibly become expelled – **of which Beasley vigorously disputes and seeks to overturn**.

36. Due Process Violation. The expulsion further violated Beasley's due process rights in that he was not given adequate notice, was given no notice of the "charges" to be brought against him, was given no opportunity to prepare a defense or to be represented by counsel. Moreover, the minutes reveal that that O'Bryan and Burns instituted a "kangaroo court" to try Beasley in absentia. The charges brought were baseless and made in bad faith, and even the minutes prepared by the SIMs counsel indicate that the primary topic of discussion was the conflict over Beasley's insistence that SIM Dallas follow its own rules. The true purpose of O'Bryan and Burns in forcing through Beasley's expulsion was to get him off the Board – which, under the bylaws the Officers and other board members were without power to do. SIM Dallas acted in extreme bad faith, and the resulting expulsion was arbitrary, capricious, and in violation of the law.

37. Illegally Constituted Board. SIM Dallas' officer's illegal action to attempt to remove Beasley from the board has led to all subsequent boards to be illegally constituted. The process to elect a new Executive Committee (board), per the bylaws, requires a vote of the current board to approve the following year's board. However, SIM Dallas has refused to allow Beasley his vote, and therefore any resulting board is illegally constituted.

38. Beasley Remains a Member of the Board. Beasley was elected to the Board by the members, and under the bylaws, only members have the exclusive power to remove a board member, and Texas law holds that Beasley's term of office extends from when he was elected, until the director's successor is elected. Tex. Bus. Org. Code § 21.407. As all subsequent boards have been illegally constituted, Beasley remains an elected member of the board – and has standing under Texas law (as a member and board member) to challenge the ultra-vires acts of SIM Dallas and its

officers or directors from when Beasley was and continues to be acting in the best interest of SIM Dallas. Tex. Bus. Org. Code §§ 20.002(c)(1); 21.522(1)(A).

39. Breach of Contract. Beasley was but a volunteer, providing his time for years in support of the organization. By agreement, at worse, if for some reason Beasley could not fulfill his duties, SIM Dallas had agreed to ask for his resignation, and he had agreed to resign. But instead of giving Beasley the professional courtesy offered to most elected officials and abide by its agreement, SIM Dallas did not ask for Beasley's resignation, but instead sought to defame and expel Beasley.

40. Illegal Distribution of Member Assets to Member, Peter Vogel. Rather than simply resolve the dispute, SIM Dallas, controlled by Burns and O'Bryan, wasted the assets of the organization by mounting an unconscionable legal defense, wasting over $422,000, in mounting and continuing legal fees. Their legal actions, to cover-up their own personal faults, included filing completely groundless, frivolous pleadings, having 2 and 3 lawyers needlessly attend depositions, and wasting court resources by removing the lawsuit to federal court, for it only to be remanded back to state court.

41. SIM Dallas relies on attorney Peter Vogel for legal services; however Peter Vogel is a member of the organization, therefore with a personal interest in the outcome of the case. February 27, 2016, plaintiff asked for Mr. Vogel's voluntary withdrawal of the case, but he refused.

42. Further, attorney Peter Vogel claims he can represent the organization, represent all of its members, represent Peter Beasley, and represent himself all within the same lawsuit – which have conflicting interests, which violate his professional responsibilities as an attorney. Attorney Peter Vogel has represented one faction of the board, against another, which violates his professional responsibilities as an attorney. He has failed in his obligation to ensure that the Texas corporation operates within its governing documents.

43. SIM Dallas, with the advice of attorney Peter Vogel, refused at every juncture offered by Beasley to meet to try and resolve the dispute. In February and March 2016, Beasley asked to meet with O'Bryan to "clear the air" and resolve the dispute, but she failed to meet. March 24, 2016, Beasley offered to meet a resolve the dispute, but SIM Dallas, via e-mail by Peter Vogel, refused to meet. April 4, 2016, Beasley asked board member Kevin Christ to inquire if SIM Dallas would meet to resolve the dispute, but they refused. And in Dallas District Court, the trial judge

ordered the parties to mediation by October 6, 2017, but SIM Dallas would not make themselves available to meet.

44. To stop the mounting legal fees, on both sides, Beasley nonsuited his lawsuit, *without prejudice*, on October 5, 2017, as no counter-claims were pending against him. But after the Dallas court dismissed the case, SIM Dallas, pursued a completely void award of $211,031 against Beasley, forcing again more legal action in appellate court.

45. Peter Vogel, him being a member, advising SIM Dallas into an unreasonable course of litigation, leads to an illegal violation of Texas law, with SIM Dallas transferring member's assets to one of its members. Tex. Bus. Code § 22.054 (1), with the potential to lead the Chapter into insolvency. Beasley seeks to have the attorney client relationship, if it actually exists, with member Peter Vogel, enjoined. Tex. Bus. Code § 20.002 (d).

46. Defamation and Tortuous Interference. Rather than resolve the dispute, SIM Dallas embarked on a campaign to defame and disparage Beasley and his software company, Netwatch Solutions, and to tortuously interfere with business and contractual arrangements. Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, **February 5, 2018**, and at other times in meetings and publications to 3rd parties.

47. SIM Dallas has refused since February 2016 to the date of filing this amendment (February 22, 2018) to meet to mediate or try and resolve the dispute.

48. The damages caused by SIM Dallas are on-going and continue to mount now well past the $1,000,000 mark.

49. Legal fees claimed or owed now are crossing beyond $900,000.

50. Beasley attempted to stop the mounting legal fees and damages with a nonsuit, but SIM Dallas keeps the dispute going – now with attorneys, like O'Bryan and Burns, keeping the fight going to hide their own wrongdoing and malfeasance.

51. Burns and O'Bryan are not acting in the best interest of SIM Dallas in authorizing over $500,000 in legal fees and a litigation strategy to cost millions in damages to innocent customers, employees and IT professionals across North Texas.

52. SIM Dallas, and its illegally constituted Board and errant leadership under Burns and O'Bryan systematically violate the laws of this State, its own bylaws, and are in effect stealing the funds of the Texas non-profit corporation for personal gain.

53. O'Bryan and Burns could easily have convened a meeting of the members in April 2016, either to attempt to remove Beasley from the Board (although no grounds for removal existed), or could have amended the Articles of Incorporation or Bylaws, or direct the Board to stop it's discriminatory membership practices so as to remove the source of the underlying conflict – 1) the substantial give away of member's assets to non-members in the name of philanthropy and 2) its discriminatory membership practices.

54. However, O'Bryan and Burns did not do so. As the Board does not have the power to remove one of its own, they moved, at Burns' behest, to expel Beasley as a member. However, a membership in SIM is not a prerequisite for Board membership. Therefore, Beasley remained a member of the Board. Nevertheless, O'Bryan and Burns caused the Board to ignore his membership, refused to invite him to meetings, and took the illegal position that Beasley had effectively been removed from the Board.

55. SIM Dallas went as far as to pay for and bring an armed peace officer to the next Board meeting to ensure Beasley remained excluded.

56. Malice. SIM Dallas acted with malice, with a specific intent to hurt Beasley, with an admission to "not be nice" and to hurt Beasley in his name, and through his company. As malice, SIM Dallas simply breached a sponsorship contract with Beasley's company, and refused to refund the sponsorship fee.

57. SIM's malice toward Beasley began in 2016 and extends into 2018, with SIM stooping so low as to meet with employees of Beasley's company, Netwatch Solutions, to undermine Beasley and his company's ability to generate revenue and service its customers.

VI. CAUSES OF ACTION

A. Count 1 – Breach of Contract Against SIM Dallas

58. The Board Agreement, bylaws of the corporation, and oral representations formed a valid contract between Beasley and SIM Dallas. SIM Dallas offered that Beasley serve on the SIM board of directors, at his own personal liability to do so.

Beasley accepted that offer and served on the board in 2013, 2014, 2015, and 2016. SIM Dallas breached that agreement a) when the President felt Beasley was not fulfilling his duties, but failed to ask for Beasley's resignation, b) failing to follow its bylaws with respect to Beasley, b) and when a legal dispute occurred, failed to cover Beasley's legal expenses in support of the organization with SIM Dallas' insurance carrier. Beasley relied on that agreement, served as a member of the board, and acted in the best interest of the organization with the knowledge that his resignation would be requested if he was not fulfilling his duties, and that his actions to protect the members would be covered by insurance. As a result of SIM Dallas' breach, Beasley has incurred damages.

59. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

B. Count 2 – Fraudulent Inducement Against SIM Dallas

60. Or in the alternative to Count 1, SIM Dallas induced Beasley to serve on the board with the false representation that he would be asked to resign if his performance was improper, and that his actions on behalf of the organization were covered under SIM Dallas' insurance. The representations by SIM Dallas were false, and SIM Dallas knew the statements were false, or made the false statements without any knowledge of its truth. SIM Dallas made these false statements with the intent that Beasley act upon the false assertions, and Beasley acted in reliance of those false statements. Beasley suffered damages.

61. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

C. Count 3 – Breach of Contract Against SIM Dallas

62. Peter Beasley paid his membership dues for the 2016 calendar year, but after April 19, 2016, SIM Dallas breached its contract and no longer allowed Beasley to enjoy his benefits of membership.

63. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

D. Count 4 – Injunction Against Ultra Vires Acts of SIM

64. Plaintiff asserts a derivative claim on behalf SIM. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

65. As pleaded herein, plaintiff has presented these claims to SIM, and SIM refuses to grant redress.

66. Defendant owes duties to SIM Dallas of good faith and due care and to act in the best interests of SIM and its members. Defendant also owes duties of obedience to act in conformity with the organizational documents and law. Defendant has failed to act in good faith, with reasonable care, and in the best interests of SIM Dallas and its members.

a. Injunction – Appoint a Receiver. Due to SIM Dallas, as controlled by Burns and O'Bryan, is unwilling to operate within its bylaws and the laws of this state, and due to it acting in a way to destroy the corporation, Plaintiff seeks the appointment of a receiver, at SIM Dallas' expense, to restore the organization to operate within its bylaws. Further, SIM Dallas, under its current leader, Nellson Burns, is engaging in a litigation defense strategy to defend against his own personal motives, at the expense of the organization, and therefore Plaintiff seeks the appointment of a receiver, at SIM Dallas' expense, to restore the organization to operate within its bylaws.

b. Injunction – Reinstate Membership and Board Position. The expulsion of plaintiff from membership in SIM Dallas and his removal from the board, as elected by the members, was in violation of the bylaws of SIM Dallas, and implied due process rights and was taken without authority and without a valid organizational purpose. The expulsion and removal is void and ultra vires. Therefore, pursuant to §20.002 of the Texas Business Organizations Code, plaintiff seeks injunctive relief voiding the ultra vires expulsion, and removal, and reinstating his membership, effective as of the date of the purported expulsion. Plaintiff is without adequate remedy at law.

c. Injunction – Stop Illegal Distribution of Assets to a Member. The contract, if one exists, to obtain services from member Peter Vogel is unreasonable and violates the Texas Business Organizations Code prohibition to not provide dividends to a member. Therefore, plaintiff seeks injunctive relief voiding the ultra vires distribution of member assets to a member.

67. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM Dallas' bylaws and charter. Plaintiff is without adequate remedy at law.

E. Count 5 – Defamation Against SIM Dallas

68. On December 31, 2016, and at other times, SIM Dallas published a statement, and that statement was defamatory concerning Beasley. SIM Dallas acted with malice, and was negligent in determining the truth of the statement. Beasley suffered damages.

69. February 12, 2017, and August 1, 2017, Beasley put SIM Dallas on notice that their false statements were defamatory, and SIM Dallas has refused, in writing on August 18, 2017, to retract the false statements.

70. SIM Dallas' actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

F. Count 6 – Declaratory Judgment

71. A live controversy exists among the parties to this dispute with respect to rights, status, and other legal relations, and Plaintiff requests this Court to issue a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.001 et seq.

a. Declaratory Relief – Expulsion of Beasley Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIM's bylaws, violated due process protections under the Texas Constitution and

violated applicable provisions of the Texas Business Organizations Code, such that Beasley's purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.

b. Declaratory Relief – Illegally Constituted Board. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, under the bylaws, all subsequent boards are allowed by approval and vote of the prior board. SIM Dallas failed to allow Beasley to vote on the 2017 and 2018 boards, and therefore those subsequent boards are illegally constituted, and the 2016 board remains the valid board.

c. Declaratory Relief – Actions of Board Subsequent to Beasley's Purported Expulsion are Also Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. After the purported expulsion, Beasley informed SIM that the proceedings were void and that he was still entitled under Texas law to notice of all board meetings, and for the right to attend and vote on the matters of the corporation. SIM ignored this demand and continued and continues to operate in violation of state law by refusing to provide Beasley notice and the opportunity to attend Board meetings and vote on Board business. Beasley seeks a declaratory judgment that all actions of SIM's Board which required a vote since April 19, 2016, were and are void – unless subsequently ratified by Beasley.

d. Declaratory Relief – Beasley Remains an Elected Board Member. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, and in violation of the bylaws, Beasley was never removed, by vote of the members, as a board member, with that

ballot being allowed by the 2016 board on which he served. Under state law, directors serve for their term until another valid election occurs, and since no valid election has since occurred, Beasley seeks a declaration that he remains a member of the elected board.

e. Declaratory Relief – Board's Attempt to Donate and Give Away SIM's Assets Violates SIM's Bylaws and Organizational Articles. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. Certain members of SIM's Board have embarked upon a charitable or philanthropic plan simply to donate or give away SIM's cash, in significant amounts, to non-members. Beasley seeks a declaratory judgment that SIM's bylaws and articles of incorporation prohibit such charitable donations of SIM's assets to benefit non-members.

72. Attorney's Fees. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

G. Count 7 – Violation of Beasley's Due Process Rights Against Defendant SIM

73. As a member of SIM, plaintiff is entitled to due process rights prior to expulsion, including a meaningful right to be confronted with the grounds of his expulsion, the right to be heard, the right to counsel, and protection against decisions that are arbitrary and capricious or tainted by fraud, oppression, and unfairness. As alleged herein, plaintiff was denied his due process rights.

74. Plaintiff is also entitled to a procedure that scrupulously abides by the organization's internal bylaws and rules. The notice for the Board meeting to expel Beasley was sent less than seven days prior to the date of the meeting in violation of the Bylaws. Furthermore, the meeting was illegally constituted because almost half the participants attending by telephone. The notice of the meeting did not provide for attendance by phone, and Beasley was not given the opportunity to attend by telephone. Moreover, the meeting was in violation of Tex. Bus. Orgs. Code § 22.002 because Beasley did not consent to the meeting to the meeting being conducted

telephonically. Furthermore, the members physically present did not constitute a quorum.

75. The bylaws and organic documents of a voluntary association constitute a contract between the association and its members. Plaintiff's due process rights are both explicit provisions of this contract and terms implied by law. By the acts and omissions alleged herein, SIM has breached its contractual duties to plaintiff. Plaintiff has performed his obligations and has been damaged by the breach.

76. Therefore, plaintiff is entitled to a mandatory injunction voiding the expulsion and reinstating his membership and to actual damages resulting from the breach. Plaintiff is without adequate remedy at law.

77. Plaintiff is further entitled to an award of reasonable and necessary attorney's fees incurred in this action on a written contract.

H. Count 8 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

78. Beasley had a contractual relationship May 2016, with the law firm of Ferguson, Braswell, Fraser, and Kubasta.

79. On May 8, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

80. Beasley suffered damages, for which he sues.

81. SIM Dallas' actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

I. Count 9 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

82. Beasley had a contractual relationship August 2016, with the law firm of White and Wiggans.

83. On October 25, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal

representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

84. Beasley suffered damages, for which he sues.

85. SIM Dallas' actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

J. Count 10 – Tortuous Interference with Contractual Relationships, Against Defendant SIM Dallas

86. Beasley had a contractual relationship August 2016, with the law firm of Dan Jones.

87. On December 29, 2016, SIM Dallas, through its agent Soña Garcia, committed the underlying tort of defamation to interfere with an existing legal representation contract. Soña Garcia, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

88. Beasley suffered damages, for which he sues.

89. SIM Dallas' actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

K. Count 11 – Tortuous Interference with Contractual Relationships Against Defendants SIM Dallas and Nellson Burns

90. From October 2014 through March 2016, Peter Beasley, through the company he owned 100%, Beasley, had an ongoing contractual and business relationship with Holly Frontier Corporation (HFC), the employer of Nellson Burns – by virtue of his personal building access badge and network login account to HFC's computer network.

91. Based on the dispute within SIM about their bylaws, Burns, acting solely in bad faith, with animosity toward Beasley, outside the scope of his legitimate duties as an officer of HFC, and in furtherance of SIM's desire and intent to punish Beasley

for his opposition to the SIM Board's improper use of organizational funds, interfered with the contract and business relationship between Beasley / Netwatch and HFC, caused HFC to shut down Beasley's access to HFC's computer system, and caused HFC's employees not to communicate with Beasley.

92. **October 2017, HFC ultimately terminated Nellson Burns as their Chief Information Officer for his interference and for embroiling them in this fight.**

93. As a direct and proximate result of Burns' wrongful and tortious interference with the contractual and business relationship between Netwatch and HFC, Beasley has sustained actual damages in an amount to be determined at trial.

94. Burns' actions, individually and as an agent of SIM Dallas were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas and Burns in an amount to be determined at trial.

L. Count 12 – Business Disparagement Against Defendants SIM

95. As 100% owner of Netwatch Solutions Inc., Beasley has standing to bring forward a business disparagement claim without the formal intervention of Netwatch Solutions Inc.

96. From March 2016, to the present, SIM Dallas has published disparaging words about Netwatch's economic interests.

97. The disparaging words were false or in some instances false by implication or innuendo.

98. SIM Dallas published the false and disparaging words with malice.

99. SIM Dallas published the words without privilege and had a requisite degree of fault.

100. As a direct and proximate result of SIM Dallas' disparagement, Netwatch has incurred general damages to its reputation and special damages in the form of lost revenue and profits from its relationship with HFC, lost business opportunities with SIM members, lost profits, and a diminution in the value of Netwatch as a going concern. Netwatch has incurred losses in expenses incurred trying to restore Netwatch's reputation.

101. SIM Dallas' actions were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

M. Count 13 – Breach of Duties/Ultra Vires Acts Against Defendants Burns and O'Bryan

102. Plaintiff asserts a derivative claim on behalf SIM Dallas. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

103. As pleaded herein, plaintiff has presented these claims to SIM Dallas, and SIM Dallas refuses to grant redress. Furthermore, any other demand would be futile because SIM Dallas is controlled by O'Bryan and Burns.

104. Defendants Burns and O'Bryan owe duties to SIM of good faith and due care and to act in the best interests of SIM Dallas and its members. Defendants also owe duties of obedience to act in conformity with the organizational documents and law. Defendants have failed to act in good faith, with reasonable care, and in the best interests of SIM and its members.

105. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM's bylaws and charter against Burns and O'Bryan and award actual damages 1) in at least the amount of membership funds wrongfully distributed to non-members, 2) any funds wrongfully distributed to attorney Peter Vogel, 3) any SIM Dallas funds paid in the individual defense of the lawsuit between Nellson Burns and Netwatch Solutions, 4) and all costs and attorney's fees incurred by SIM Dallas in the defense of the ultra vires and illegal actions of SIM Dallas which Nellson Burns and Janis O'Bryan pursued. Plaintiff is without adequate remedy at law.

106. Plaintiff further requests that SIM Dallas be awarded its attorney's fees incurred in this derivative action pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 because the Articles and Bylaws constitute a contract among the corporation and its members, and Burns and O'Bryan have breached that contract by their actions alleged herein. Plaintiff requests under the principles of equity that any attorney's fees awarded be distributed to him personally to avoid unjust enrichment and because this action has conferred a substantial benefit on the corporation.

VII. ATTORNEY FEES

107. Plaintiff seeks to recover attorney fees as authorized under declaratory judgment, fraud, and breach of contract statutes.

VIII. CONDITIONS PRECEDENT

108. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

IX. CONCLUSION AND PRAYER

109. For these reasons, plaintiff asks that the Court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

a. Actual damages.

b. Declaratory Judgment.

c. Injunctive Relief.

d. Appointment of a Receiver.

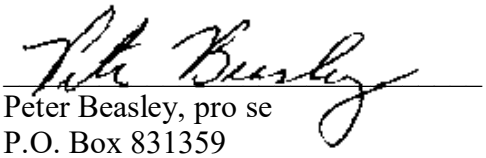
e. Prejudgment and postjudgment interest.

f. Court costs.

g. Attorney's fees and costs as are equitable and just.

h. All other relief to which plaintiff is entitled.

Respectfully submitted,



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CAUSE NO. DC-18-05278

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, et al.,	§	
	§	
	§	
Defendant.	§	**191st JUDICIAL DISTRICT**

ORDER GRANTING DEFENDANTS' MOTION TO DECLARE PETER BEASLEY A VEXATIOUS LITIGANT

On September 20, 2018, the undersigned heard Defendants' Motion to Declare Peter Beasley a Vexatious Litigant. The Parties appeared through counsel. After considering the motion, the post-hearing briefing from both parties, the evidence presented, and arguments of counsel, the Court finds that the statutory elements are satisfied in all respects and therefore makes the following ORDER.

The Motion to Declare Peter Beasley a Vexatious Litigant is **GRANTED** and the Court declares Peter Beasley a Vexatious Litigant.

Plaintiff Peter Beasley is required to post bond in the amount of $422,064.00 with the District Clerk as security per TEX. CIV. PRAC. & REM. CODE § 11.055 within thirty (30) days of this Order. If such security is not timely posted, this case will be dismissed with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.

Furthermore, the Court prohibits Plaintiff Peter Beasley from filing any new lawsuits *pro se* in any court in the State of Texas until Plaintiff receives permission from

the appropriate local administrative judge pursuant to sections 11.101 and 11.102 of the TEX. CIV. PRAC. & REM. CODE. Failure to comply with this ORDER shall be punishable by contempt, jail time, and all other lawful means of enforcement. TEX. CIV. PRAC. & REM. CODE § 11.101(b).

It is further ORDERED that the Clerk of the Court provide a copy of this order to the Office of Court administration of the Texas Judicial System within 30 days of entering this order.

SIGNED this 11th day of ~~October~~ December, 2018.

JUDGE PRESIDING

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Associated Case Party: Peter Beasley

Name	BarNumber	Email	TimestampSubmitted	Status
Peter Beasley		pbeasley@netwatchsolutions.com	9/14/2020 11:34:58 PM	SENT

Associated Case Party: Society of Information Management

Name	BarNumber	Email	TimestampSubmitted	Status
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Sona Julianna Garcia	24045917	sjgarcia@grsm.com	9/14/2020 11:34:58 PM	SENT
Robert Bragalone		bbragalone@grsm.com	9/14/2020 11:34:58 PM	SENT